TEXAS REGISTER

Volume 30 Number 18 *May 6, 2005* *Pages 2617-2810*

Kathy Cribbs
10th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781),** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $240. First Class mail subscriptions are available at a cost of $300 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

IN THIS ISSUE

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Manufactured Housing Division

State Preservation Board

Public Utility Commission of Texas

University of North Texas

Texas Workers' Compensation Commission

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 20, 2005

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2007, Judge Marilea Whatley Lewis of Dallas (replacing Judge Cheryl Shannon of Dallas whose term expired).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2007, Eric J. Cederstrom of Lubbock. Mr. Cederstrom is being reappointed.

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2007, James Richard Pendell of Clint. Mr. Pendell is being reappointed.

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2009, Glen Allen Kercher of Huntsville (replacing Linda Robinson of Houston who resigned).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2011, Monica Hernandez of McAllen (replacing Kristy Carr of Austin whose term expired).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2011, Aaron Paul Pierce of Belton (replacing Richard Mack of Lubbock whose term expired).

Appointed to the Texas Polygraph Examiners Board for a term to expire June 18, 2009, Andy Sheppard of Rowlett. Mr. Sheppard is replacing Mr. Kelly Hendricks of Houston who resigned.

Rick Perry, Governor

TRD-200501665

♦ ♦ ♦

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0337-GA

Requestor:

The Honorable Will Hartnett

Chairman, Judiciary Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Pre-eviction notice required by section 24.005 of the Property Code for purposes of section 154.005 of the Local Government Code (Request No. 0337-GA)

Briefs requested by May 20, 2005

RQ-0338-GA

Requestor:

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether Harris County Animal Control must provide to a private corporation that contracts with the City of Houston information made confidential under chapter 826 of the Health and Safety Code (Request No. 0338-GA)

Briefs requested by May 20, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200501698
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 25, 2005

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 113. PROCUREMENT DIVISION

SUBCHAPTER A. PURCHASING

1 TAC §113.4

The Texas Building and Procurement Commission proposes amendments to Title 1, §113.4 - Centralized Master Bidders List. The amendments will revise the current rule to correct administrative errors in the rule title and in the name of the catalog information systems vendors. An additional revision to the rule is proposed to add more specificity to the statutory authority for administratively removing a vendor from the Centralized Master Bidders List (CMBL).

Ms. Cindy Reed, Executive Director, has determined for the first five year period the rules are in effect there will be no fiscal implication for the state or local governments as a result of the administrative corrections made to the CMBL rule. An indirect positive fiscal implication is anticipated from the rule revision relating to the removal of vendors from CMBL who have, by their omissions or lack of responsibility, damaged the fiscal interests of the state. Although the overall positive fiscal impact on state and local governments cannot be quantified at present, the revision relating to statutory specificity will promote competition among responsible vendors for state business opportunities and enable the state to more readily identify and exclude business entities that are not responsible. The overall result will be that the procurement actions of the state will be accomplished in a more cost efficient manner.

Ms. Reed has further determined that for each year of the first five year period the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule is compliance with the current statutory requirements of Texas Government Code, Chapters 2155 and 2157 as relates to the removal of non responsible vendors from the statewide bid list and the registration of catalog information systems vendors. There will be a positive effect on large, small or micro-businesses that routinely participate in state business opportunities in that statutory authority is clarified for policing the quality of the statewide centralized master bidders list and vendor performance expectations are referenced more exactly. There will be no anticipated economic costs to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposals may be submitted to Elizabeth J. Boyt, Paralegal to the General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments may also be sent via email to elizabeth.boyt@tbpc.state.tx.us. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*.

The amendments to §113.4 are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §2152.003, which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the sections.

The following codes are affected by these rules: Texas Government Code, Title 10, Subtitle D, §§2152.003, 2155.070, 2155.077, 2155.262 through 2155.270 and §2157.062.

§113.4. Centralized Master Bidders List.

(a) The TBPC [~~commission~~] maintains the Centralized Master Bidders List (CMBL) of the names and addresses of vendors which have registered for inclusion on the CMBL. The CMBL is maintained for the state's use in obtaining competitive bids for purchases and for registering vendors who wish to be designated as catalog [~~qualified~~] information systems vendors (CISV). Bid invitations and requests for proposals shall be transmitted to vendors on the CMBL for the solicited commodity and/or service designated by the vendor for open market, term contracts, competitive sealed proposal acquisitions and delegated purchases in excess of the non-competitive bid limit.

(b) Registration for the Centralized Master Bidders List is an on line process with a vendor managed web based system. The established fee is to be paid annually.

(c) It is the vendor's responsibility to maintain their CMBL profile to ensure correct information for receipt of bids based on products or services which can be provided for selected districts for the State of Texas.

(d) A vendor may be administratively removed from the CMBL for one or more of the following reasons:

(1) failing to pay or unnecessarily delaying payment of damages assessed by the TBPC [~~commission~~];

(2) failing to remit the annual CMBL fee; or

(3) any factor set forth in Texas Government Code, §2155.070 & §2155.077 [~~Chapter 2155~~].

(e) A vendor which has been removed from the CMBL shall not be reinstated until expiration of the period for which the vendor was removed and approval is granted.

(f) An error in addressing a bid invitation or request for proposal or a failure of the post office to deliver the solicitation will not be sufficient reason to require the TBPC [~~commission~~] to reject all other bids or proposals.

(g) State agencies shall use the CMBL to select bidders for competitive bids or proposals and to the fullest extent possible for purchases exempt from the TBPC's [~~commission's~~] purchasing authority. This requirement does not apply to the Texas Department of Transportation or to an institution of higher education as defined by §61.003, Education Code, but an institution of higher education should use the CMBL when possible.

(h) As set forth in Texas Government Code, §2155.269, state agencies may waive the requirement to solicit only from bidders listed on the Centralized Master Bidders List (CMBL) by obtaining approval from the agency head or designee to add non-CMBL bidders to the final bid list. Non-CMBL bidders can be added to the final bid list for specific solicitations where the requirement to solicit only CMBL bidders is not warranted, such as to increase competition. This does not apply to purchases in §113.19 of this title, relating to Catalog of Information Systems Vendors (CISV).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501657
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 463-4257

♦ ♦ ♦

SUBCHAPTER C. SPECIFICATION

1 TAC §113.33, §113.34

The Texas Building and Procurement Commission (TBPC) proposes amendments to 1 TAC §113.33, Selection of Items for Development of Texas Uniform Standards and Specifications, and §113.34, Development of Texas Uniform Standards and Specifications. The amendments include changes that reflect current statutory responsibilities for developing Texas school bus specifications and clarify the role and responsibilities of TBPC in procurement of school buses, pursuant to Texas Local Government Code, Chapter 271.083. The proposed amendments also include minor revisions to remove a gender related reference to purchasers and reflect the correct name of the Commission and division that is responsible for procurement.

Ms. Cindy Reed, Executive Director, has determined for the first five-year period the rules are in effect there will be no fiscal implication for the state or local governments as a result of the revised and added rules. The revised text, added definitions and rules with facilitate the use and understanding of statutory requirements associated the selection and development of Texas Uniform Standards and Specifications.

Ms. Reed has further determined that for each year of the first five-year the amendments are in effect, the public benefit anticipated as a result of enforcing the revised rules will be positive with respect to the effect on large, small or micro-businesses that routinely participate in state business opportunities. There will be no anticipated economic costs to persons who are required to comply with the rules and there is no impact on local employment.

Comments on the proposals may be submitted to Elizabeth J. Boyt, Paralegal to the General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments may also be sent via email to: elizabeth.boyt@tbpc.state.tx.us. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*.

The amendments to §113.33 and §113.34 are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §2152.003 which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement procurement related statutes.

The following codes are affected by these rules: Texas Government Code, Title 10, Subchapter B, §§2155.066, 2155.068, 2155.069, 2155.070, the Texas Government Code, Subchapter D, §2155.204, the Texas Local Government Code, §271.083, the Texas Education Code, §34.001 and the Texas Transportation Code, §547.7015.

§113.33. Selection of Items for Development of Texas Uniform Standards and Specifications.

Items are selected for specification development by or through one or more of the following methods.

(1) Required by statute.

(A) School buses. Pursuant to the Texas Education Code, §34.002, the Texas Department of Public Safety, with advice from the Texas Education Agency, establishes safety standards for school buses used to transport students. Pursuant to the Texas Education Code, §34.001, specifications developed by the Texas Department of Public Safety in compliance with the Texas Transportation Code, §547.7015, shall be referenced in solicitations and made a part of any contract awarded by the TBPC as result of a requisition received from a school district pursuant to the Texas Local Government Code, Chapter 271.083. For the convenience of qualified purchasing entities the specifications shall be posted on the TBPC website.

[~~(A) School buses. Pursuant to the Texas Education Code, §34.002, the Texas Department of Public Safety, with advice from the commission and the Texas Education Agency, establishes safety standards for school buses used to transport students. Pursuant to the Transportation Code, §547.7015, the commission hereby delegates to the Director of the Central Procurement Division the authority to develop specifications governing the design, color, lighting and other equipment, construction, and operation of school buses. The specifications shall be posted on the commission's website~~].

(B) Prison-made products and raw materials. Pursuant to Texas Government Code, Subtitle G, Subchapter B, §7.027, an article or product produced under Subchapter B must meet specifications established by the TBPC [~~commission~~] that are in effect when the article or product is produced.

(2) Requests from using agencies. If a using agency finds that it is having difficulty in obtaining a certain item to meet a particular requirement, then the agency can communicate this need to the standards and specifications section of the [~~Central~~] Procurement Division.

(3) Requests from purchasers. If a state purchaser is having difficulty in securing bids on a particular item in the absence of adequate uniform standards and specifications, the purchaser [~~he~~] may request the standards and specification section to investigate the feasibility of developing a uniform standard and specification to cover the purchase of this item.

(4) Requests from vendors and/or bidders. Bidders may petition the standards and specification section to ascertain the feasibility of developing a specification on an article bid by agencies.

§113.34. Development of Texas Uniform Standards and Specifications.

(a) Preparation of Texas Uniform Standards and Specifications.

(1) The procedure used in developing uniform standards and specifications includes consultation, research, collection, and evaluation of data, and preparation of the specification. The standards and specification section consults with knowledgeable people in various state agencies, user advisory groups, purchasers, vendors, manufacturers, distributors, bidders, governmental and trade associations, colleges and universities, testing laboratories, and other experts.

(2) Uniform standards and specifications from federal, state, and local governments and standards agencies, such as ASTM, SAE, and others, and product literature from manufacturers, distributors, etc., are obtained, studied, and their contents evaluated.

(3) A proposed specification is then prepared by stipulating minimum requirements necessary to provide products of the level of quality required by various state agencies.

(4) This draft specification is then distributed to the individuals and groups initially contacted as well as other interested parties for their review, comments, and suggestions.

(5) Comments and suggestions received are reviewed, analyzed, and evaluated, and the proposed specification modified accordingly.

(6) If, as a result of this analysis and evaluation, major changes in the proposed specification are made, then a second proposed specification is prepared and distributed and the process outlined in paragraphs (4) and (5) of this subsection is followed.

(7) If no major change in the proposed specification is made, then the uniform standard and specification is finalized and distributed.

(8) Comments and suggestions received from the distribution of a second proposed specification are reviewed, analyzed, evaluated, and the process outlined in paragraphs (5) and (7) of this subsection is followed.

(9) This process is continued until a uniform standard and specification is developed that will provide the level of quality required by the state and that will provide competitive bidding.

(10) The agency user advisory groups provide the standards and specifications section with their individual requirements and otherwise assist in the preparation and development of specifications.

(b) Distribution of Texas uniform standards and specifications. The initial distribution of newly adopted or prepared uniform standards and specifications is to state agencies, vendors/distributors and manufacturers contacted during the development phase of the uniform standard and specification and subsequently to others upon request.

(c) Approved products list.

(1) A manufacturer, vendor, or distributor may submit a product for inclusion in an established approved product list to the standards and specifications section the [~~Central~~] Procurement Division, along with technical literature and product specifications. The product may then be tested and the results evaluated and compared with the minimum level of quality for the approved products list.

(2) A product can be removed from the approved products list if:

(A) the quality of a given product is decreased; or

(B) the minimum level of quality for the approved products list is increased in order to provide the quality of products required by state agencies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501658
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 463-4257

♦ ♦ ♦

SUBCHAPTER F. VENDOR PERFORMANCE AND DEBARMENT PROGRAM

1 TAC §§113.101 - 113.108

The Texas Building and Procurement Commission (TBPC) proposes new 1 TAC §§113.101 - 113.108, concerning vendor performance and debarment. TBPC proposes the new rules to protect the interests of the state and to enhance public confidence in the integrity of the state's procurement policies and practices. The rules replace current §113.102, concerning vendor performance and debarment which is contemporaneously being proposed for repeal in this issue of the *Texas Register*. The new rules provide more detailed notice of the factors TBPC will consider when making a decision to debar a vendor. Vendors doing business with the state will have a clearer understanding of the expected performance and ethical standards. The rules also provide procedures to ensure that the vendor has an opportunity to be heard prior to a finding by TBPC.

Proposed §113.101, concerning the purpose and applicability of 1 TAC Chapter 113, Subchapter F, describes the reasons for the rules and that they apply to all procurement conducted under the authority of Government Code, Title 10, Subtitle D.

Proposed §113.102, concerning definitions provides definitions for terms not otherwise defined by statute or in §113.2, concerning definitions and in the case of the debarment definition, adds language to the definition in §113.2.

Proposed §113.103, concerning protecting the state's interest when there is a failure to meet specifications, lists the factors TBPC shall consider when proposing an action based on a vendor's failure to meet specifications.

Proposed §113.104, concerning protecting the state's interest when there is a failure to meet contract requirements, contains the factors TBPC shall consider when evaluating vendors' performance measured by the vendor performance tracking system and the categories listed therein.

Proposed §113.105, concerning debarment, describes actions TBPC may take and the general reasons for debarment including the time periods of debarment. Proposed §113.105(a) describes TBPC's potential actions. Proposed §113.105(b) requires notice

of potential action. Proposed §113.105(c) provides that TBPC may assess actual damages and costs against a vendor who fails to perform as specified under a contract. Proposed §113.105(d) provides that a vendor may be debarred upon finding that the vendor has engaged in the conduct prohibited by that subsection. Proposed §113.105(e) provides that a vendor may be debarred upon a finding that the vendor's performance was substandard. Proposed §113.105(f), (g), and (h), concerning failure to meet specifications, describe actions upon a first and subsequent failures to meet specifications.

Proposed §113.106, concerning procedures for investigations and debarment, provides that TBPC shall provide notice to the vendor of a proposed action and also describes the time periods for vendor response, investigations, and TBPC finding. The proposed section also contains mitigating circumstances and remedial measures TBPC may consider when determining the appropriate action.

Proposed §113.107, concerning request for review, provides a process for a review of TBPC action. The Executive Director conducts the review and has discretion to revise the finding.

Proposed §113.108, concerning the vendor performance tracking system, describes the parameters for the system and requires state agencies to report vendor performance for contracts over $25,000.

Cindy Reed, Executive Director, has determined that for the first five year period that the new rules are in effect there will be no fiscal implication for the state or local governments as a result of enforcing or administering the new rules. An indirect positive fiscal implication is anticipated to result from improving the state's ability to hold vendors accountable. Although the impact cannot be presently quantified, the revised rules will enable the state to more readily identify and exclude poorly performing vendors. Overall, this will improve the efficiency of the state procurement process.

Ms. Reed has further determined that for each year of the first five year period the new rules are in effect, the anticipated benefit to the public will be more efficient and effective statewide compliance with the state statute, Government Code §2155.070 and §2155.077, relating to the debarment of non responsible vendors (contractors). There will be a positive impact on large, small and micro-businesses that routinely participate in business because the new rules provide more detail regarding required standards of performance and behavior and provide procedures that give vendors an opportunity to be heard prior to debarment. There will be no anticipated economic costs to persons who are required to comply with the rules because the standards of performance are already required under state laws and contracts. Additionally these proposed rules provide notice to vendors that assist them in proper performance under state contracts; the rules also describe the vendor's opportunities to perform remedial measures and to be heard during the debarment proceedings.

Ms. Reed has determined that these proposed rules do not affect a local economy and therefore TBPC has not prepared a local employment impact statement under Government Code §2001.022.

Comments on the new rules may be submitted to Elizabeth J. Boyt, Paralegal to the General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to elizabeth.boyt@tbpc.state.tx.us. All comments must be received no later than thirty days from the date of publication of the proposal in the *Texas Register*.

The proposed new §§113.101 - 113.108, are proposed under the authority of the Texas Government Code, §2155.070 and §2155.077(c).

The following codes are affected by the new sections: Texas Government Code, Chapter 2155, 2156, 2157, 2158, 2161, 2162, 2163, 2165, 2166, 2167, 2170, 2171, 2172, 2175, 2177; Local Government Code, Chapter 271; and the Transportation Code, Chapters 223 and 224.

§113.101. Purpose and Applicability.

(a) The purpose of this subchapter is to protect the interests of the state and to ensure public confidence in the integrity of the State's procurement laws, policies and practices. Debarment is a discretionary action and shall be undertaken only for the reasons in, and under the procedures of, this subchapter.

(b) This subchapter applies to all vendors and contractors who sell goods and services to the state through any purchasing method authorized by Government Code, Title 10, Subtitle D, Chapters 2155 through 2177. This subchapter applies to vendors and contractors who sell goods and services to a governmental entity whether that entity has been delegated authority by the Commission or is exempt from the Commission's procurement rules and procedures.

§113.102. Definitions.

(a) The definitions in Government Code §§2155.001, 2157.001, 2158.001 and in §113.2 of this title apply to this subchapter, except as defined in subsection (b) of this section.

(b) In this subchapter, the following definitions apply.

(1) Bidders Lists: the centralized masters bidders list maintained by the Commission and all other state bidders lists.

(2) Contractor: any private sector person selling goods and services to the State and all successors-in-interest to that contractor.

(3) Debarment: an exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in this subchapter, commensurate with the seriousness of the offense, performance failure, or inadequacy to perform. Debarment includes removal of a vendor's name and the vendor's goods and services from all state bidders lists and a prohibition on that vendor and its successors in interest from bidding on and receiving any contracts from the state for a specified period of time.

(4) Successors in interest: any person with interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized subsequent to the debarment or other action under this subchapter that has the same or similar management, ownership or principal employees as the debarred vendor.

(5) State: any agency of the State of Texas, including institutions of higher education, and any governmental entity authorized to purchase goods and services under Government Code, Title 10, Subtitle D.

(6) Vendor: any person selling goods and services to the State and all successors-in-interest to that vendor.

§113.103. Protecting the State's Interest: Failure to Meet Specifications.

(a) When a vendor's goods or services fail to meet contract specifications, TBPC shall consider:

(1) the degree and nature of the variation between the contract specifications and the specifications of the goods or services actually delivered or offered for delivery;

(2) whether the variation creates a hazard to life, health, safety, welfare or property;

(3) whether the vendor knew of the variation when the bid was submitted or when the goods were delivered;

(4) whether the failure to meet specifications adversely impacts the use of other goods or services;

(5) the ability of the vendor to provide the goods or services that do comply with the required specifications;

(6) the amount of economic loss to the state; economic loss includes, but is not limited to, costs arising from delay, training of employees, lost productivity, procuring substitute goods or services and any other cost, direct or indirect, arising out of the failure to meet specifications; and

(7) any other factors TBPC determines are relevant to ensure protection of the state's interest; the Commission shall specify such other factors in a finding made pursuant to §113.106 of this subchapter.

(b) In addition to TBPC, any state agency, including an institution of higher education, may determine that goods and services fail to meet specifications. Where that determination is made by an entity other than TBPC, TBPC is authorized to act against the vendor without further testing and inspection of the goods and services.

§113.104. Protecting the State's Interest: Failure to Meet Contract Requirements.

(a) When a vendor's goods or services fail to meet contract requirements, TBPC shall consider whether the failure was:

(1) a complete failure to deliver the goods and services or failure to deliver

(A) in the time period specified in the contract;

(B) to the location specified in the contract; and

(C) in the manner specified in the contract.

(2) a failure to deliver goods

(A) in the specified quantity;

(B) with the specified invoices or other necessary documentation;

(C) in specified packaging;

(D) in good and usable condition;

(E) without unauthorized substitutions; and

(F) with specified installation including specified repair and replacement parts.

(3) a failure to deliver services

(A) within the time period specified in the contract;

(B) in the manner or at the level specified in the contract considering;

(i) unsuitability of the final product for the purpose intended;

(ii) lack of integration into or compatibility with other pre-existing systems or processes;

(iii) repeated failure of the final product to reliably operate;

(iv) repeated cost overuns due to circumstances within the control of the vendor;

(v) failure to adhere to contract schedules or ensure timely completion;

(vi) failure to provide specified employee training;

(vii) failure to provide specified reports;

(viii) misrepresentation of qualifications of assigned personnel; and

(ix) any other failure to perform that materially affects the quantity or quality of the service.

(C) in conformance with

(i) professional standards of care and codes of conduct;

(ii) generally accepted principles of the business or profession; and

(iii) laws and regulations governing the service, including any proper and necessary licenses, permits, certifications, or other approvals required for the vendor to lawfully perform the services.

(b) TBPC also may evaluate the vendor's performance by considering whether the vendor:

(1) provided accurate and timely invoices;

(2) provided and maintained proof of insurance, bonds, guarantees, letters of credit or other required documents;

(3) provided timely notice of unanticipated factors that may cause delay;

(4) responded appropriately to emergencies;

(5) maintained sufficient financial responsibility; and

(6) any other factors TBPC determines are relevant to ensure protection of the state's interest; TBPC shall specify such other factors in a finding made pursuant to §113.106 of this subchapter.

§113.105. Debarment.

(a) TBPC Actions. Under this subchapter, TBPC may, in order to protect the interests of the State:

(1) conduct an investigation upon a complaint regarding a vendor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;

(2) cancel one or more of the vendor's active or pending contracts upon a complaint regarding the vendor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;

(3) assess actual damages and costs incurred due to vendor's failure to perform as specified in the contract;

(4) debar a vendor for a specified period of time; and

(5) take any other action authorized by law.

(b) Any action under subsection (a) of this section shall occur upon notice as required under §113.106 of this subchapter. TBPC may, in its sole discretion, find that more than one of the actions in subsection (a) of this section is appropriate and necessary to protect the state's interests.

(c) Damages for Failure to Perform. TBPC may assess actual damages and costs incurred by the state when a vendor fails to perform as specified under a contract. The damages and costs may be assessed whether or not the vendor received notice of investigation or debarment under this subchapter. TBPC shall consider a failure to pay assessed damages in determining whether to debar a vendor under this subchapter.

(d) TBPC may debar a vendor for a period of no more than five years upon a finding that:

(1) continued acceptance of goods or services or vendor performance under the contract may constitute a hazard to health, safety, welfare or property;

(2) the vendor committed fraud in the procurement or performance of the contract, including submission of falsified documents by the vendor or any person under the direction or control of the vendor;

(3) there was financial participation by a person who received compensation from the governmental entity to participate in preparing the specifications or request for proposals on which the contract is based or there was any other violation of state ethics laws;

(4) the vendor has been debarred by another state or by the federal government;

(5) the vendor has been convicted of a crime related to fraud in the procurement or performance of any governmental contract including, but not limited to, a conviction for violation of antitrust, collusion, conspiracy, larceny, theft of services, bribery, coercion laws or any other criminal act based on an intent to defraud any governmental entity in the provision of goods or services; and

(6) the vendor has publicly indicated an unwillingness to honor a bid award.

(e) TBPC may debar a vendor for a period of no more than five years upon a finding that the vendor's performance was substandard. TBPC shall consider:

(1) the accumulated scoring measured by the Vendor Performance Tracking System and:

(A) the number and severity of the vendor's performance failures in relation to the volume of goods and services provided;

(B) the effectiveness of remedial measures taken by the vendor; and

(C) the age and relevance of past performance information.

(2) the vendor's breach of contract where the breach results in:

(A) significant economic loss to the state; significant economic loss includes, but is not limited to, costs of delay, procurement from a different vendor, costs of initial procurement, contract administration and any other cost, direct or indirect, arising from or attributable to the breach;

(B) a hazard to health, safety, welfare or property; or

(C) damage to the state's reputation for integrity in procurement or honest, efficient administration.

(f) Failure to Meet Specifications: General. TBPC shall remove a vendor's name from all bidders lists and prohibit the vendor from bidding on and receiving any contracts from the state when the vendor's goods or services fail to meet specifications. The period of removal shall be less than one year. The period of time for removal shall be determined by evaluating the factors listed in §113.103 of this subchapter, relating to failure to meet specifications.

(g) Failure to Meet Specifications: Repeated Complaints. If after the period of removal determined under subsection (f) of this section, TBPC determines that the same vendor or a successor in interest to the vendor has again responded to a contract with goods or services that do not meet specifications, TBPC shall remove the vendor's name and the vendor's goods and services from all bidders lists for a period of one year.

(h) Failure to Meet Specifications: Debarment. If after the expiration of the one year removal under subsection (g) of this section, TBPC determines that the same vendor or a successor in interest to the vendor has again responded to a contract with goods or services that do not meet specifications, TBPC shall debar the vendor for a period of no more than five years.

§113.106. Procedures for Investigations and Debarment.

(a) Method and Content of Notice. TBPC shall notify the vendor by the most expeditious method available, including but not limited to telephone, e-mail, and fax, of an action under this subchapter. In addition to the most expeditious method, TBPC shall also notify the vendor in writing, via certified mail, return receipt requested. The notice shall be in terms sufficient to apprise the vendor of the conduct or transactions upon which it is based. TBPC shall notify a vendor when:

(1) a vendor is being investigated for potential debarment;

(2) a vendor's contracts have been cancelled; or

(3) a vendor will be disbarred.

(b) Investigation. TBPC shall investigate a complaint that a vendor has failed to perform under the contract for any of the reasons in this subchapter.

(1) TBPC shall complete its investigation within 120 days of the receipt of the complaint. TBPC may, upon receipt of a complaint, cancel the vendor's contracts or cease payments under the vendor's contracts during the period the vendor is under investigation.

(2) Participation of Receiving State Agency. TBPC, in conjunction with the receiving agency, shall decide whether to cancel the vendor's contracts by considering:

(A) the effects of a work stoppage on the state agency;

(B) the seriousness of the breach of contract;

(C) any hazard to health, safety, welfare or property; and

(D) any other reason TBPC and the state agency determine is relevant to the particular circumstances.

(c) Vendor Response. A vendor shall submit a written response to TBPC within ten (10) days of receipt of the notice received under subsection (a) of this section. The vendor is presumed to have received the notice upon TBPC's receipt of fax confirmation or receipt returned by U.S. mail, whichever period is shorter. TBPC may, for good cause shown, allow the vendor one ten (10) day extension of time to provide the vendor's response.

(d) Contents of Vendor Response. The vendor shall respond to each reason TBPC cites in the notice and shall include all facts the vendor believes are relevant, including any applicable mitigating circumstances and remedial measures.

(e) TBPC Finding. Upon completion of its investigation or upon receipt of the vendor's response, TBPC shall determine whether

the vendor should be debarred. TBPC shall consider the seriousness of the vendor's acts or omissions and any mitigating factors or remedial measures. TBPC shall inform the vendor of its finding within ninety (90) days of the original notice provided in subsection (a) of this section. If TBPC is conducting an investigation under subsection (b) of this section, then the time periods in this subsection are extended by the length of the investigation.

(f) Mitigating Circumstances. TBPC shall consider whether the vendor's failure to perform was caused, in whole or in part, by:

(1) an act of God or *force majeure*; TBPC shall review whether the vendor provided TBPC with timely notification of the event and the reasonableness of the duration of the vendor's failure to perform after the event;

(2) mutual mistake;

(3) legal impossibility; or

(4) significant economic disruption affecting a particular industry.

(g) Remedial Measures. TBPC may consider whether the vendor:

(1) immediately identified and remedied the cause of the failure to perform;

(2) brought the offending conduct to the attention of TBPC and fully investigated the circumstances surrounding that conduct;

(3) cooperated fully in TBPC's investigation;

(4) recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment; and

(5) any other remedial measures, including implementation of control procedures, ethics training, or other disciplinary actions against responsible individuals, that the vendor has instituted.

§113.107. Request for Review.

(a) A finding that a vendor should be debarred may be reviewed by the Executive Director at the request of the vendor. A vendor shall submit a written request for review by the Executive Director within ten (10) days of receipt of the TBPC finding.

(b) The Executive Director may reinstate the vendor to bidders lists; reduce the period of debarment; affirm the finding of TBPC; or reinstate the vendor to a particular contract. The Executive Director may take one or more of the actions listed herein and shall specify, in writing, the reasons for the decision.

(c) The Executive Director shall issue the decision on the request for review within sixty (60) days of the receipt of the vendors' request for review.

(d) No person who has an interest in the outcome of the Executive Director's review may communicate directly or indirectly upon the merits of an investigation or debarment with any commission employees prior to the Executive Director's decision unless the Executive Director specifically authorizes such communication.

§113.108. Vendor Performance Tracking System.

(a) TBPC shall utilize the vendor performance tracking system, available at http://www.tbpc.state.tx.us/stpurch/venvpts.html. The system measures vendor performance for purchases over $25,000, and is used by TBPC to score vendor performance in the areas of commodity delivery and service and service delivery and performance.

(b) State agencies shall report a vendor's performance on any purchase of $25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exempt from TBPC's procurement rules and procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501660
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 463-4257

♦ ♦ ♦

1 TAC §113.102

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Building and Procurement Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Building and Procurement Commission proposes the repeal of 1 TAC §113.102, concerning vendor performance and debarment. New §§113.101 - 113.108 will replace the repealed section and are contemporaneously proposed in this issue of the *Texas Register*.

Cindy Reed, Executive Director, has determined that for the first five year period that the repeal is in effect there will be no fiscal implication for the state or local governments as a result of enforcing or administering the repeal.

Ms. Reed has further determined that for each year of the first five year period the repeal is in effect, the anticipated benefit to the public will be more efficient and effective statewide compliance with the state statute, the Texas Government Code, §2155.077, relating to the debarment of non-responsible vendors (contractors). There will be a positive impact on large, small and micro-businesses that routinely participate in business because the repeal will make possible greater clarity in the debarment rule. There will be no anticipated economic costs to persons who are required to comply with the repeal and there is no impact on local employment.

Comments on the repeal may be submitted to Elizabeth J. Boyt, Paralegal to the General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to elizabeth.boyt@tbpc.state.tx.us. All comments must be received no later than thirty days from the date of publication of the proposal in the *Texas Register*.

The repeal of §113.102 is proposed under the authority of the Texas Government Code, §2152. 003 and §2155.077.

The following codes are affected by this repeal: Texas Government Code, Chapter 2155, 2156, 2157, 2158, 2161, 2162, 2163, 2165, 2166, 2167, 2170, 2171, 2172, 2175, 2177; Local Government Code, Chapter 271; and the Transportation Code, Chapters 223 and 224.

§113.102. Vendor Performance and Debarment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501656
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 463-4257

♦ ♦ ♦

SUBCHAPTER G. BUYING UNDER CONTRACT ESTABLISHED BY AN AGENCY OTHER THAN THE TEXAS BUILDING AND PROCUREMENT COMMISSION

1 TAC §113.125, §113.126

The Texas Building and Procurement Commission (TBPC) proposes amendments to 1 TAC §113.125, Buying under Contract Established by an Agency Other Than the General Services Commission and §113.126, Purchasing from Interstate Compacts and Cooperative Agreements. The proposed amendments to §113.125 and §113.126 are needed to update the current rules to reflect the correct name of the Commission in the rules as well as in the Subchapter Table of Contents. The proposed amendments also include a revision of §113.125(b), relating to the agency notification process. The revisions will add clarity and a sequential approach to the entire agency notification process and the responsibilities of the Commission.

Ms. Cindy Reed, Executive Director, has determined for the first five-year period the rules are in effect there will be no fiscal implication for the state or local governments as a result of the revised rules.

Ms. Reed has further determined that for each year of the first five-year the amendments are in effect, the public benefit anticipated as a result of enforcing the revised rules will be positive with respect to the effect on large, small or micro-businesses that routinely participate in state business opportunities. There will be no anticipated economic costs to persons who are required to comply with the rules and there is no impact on local employment.

Comments on the proposals may be submitted to Elizabeth J. Boyt, Paralegal to the General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments may also be sent by email to: elizabeth.boyt@tbpc.state.tx.us. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*.

The amendments to §113.125 and §113.126 are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §2152.003 which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement procurement related statutes.

The following codes are affected by these rules: Texas Government Code, Title 10, Subchapter B, §2155.079, Subchapter C, §2155.132 and Subchapter I, §2155.502.

§113.125. Buying under Contract Established by an Agency Other Than Commission.

(a) A state agency may purchase goods or services under a contract made by another state agency other than the Texas Building and Procurement Commission (TBPC) [~~commission~~] by complying with this rule.

(b) Before making a particular purchase from a contract made by another state agency, the requesting state agency must notify the TBPC in writing that the purchase is being considered. The notification must be signed by the chief purchasing officer for the agency and include a confirmation that a TBPC contract does not exist for similar goods or services. The agency notification should also disclose the terms of the other agency contract and capabilities of the vendor. The agency notification should include a justification that addresses how using the other agency contract will be more advantageous than creating a new contract. Relevant factors that may be considered in the justification are reduced administrative costs, increased responsiveness, and aggregate purchasing power, among others.

[~~(b) A state agency, including the commission, must state a justification on how using the existing contract will be more advantageous than creating another contract. Circumstances for this would include reduced administrative costs and aggregate purchasing power. Before making a particular purchase, the requesting state agency must notify the commission in writing that the purchase is being considered. The notification must be signed by the chief purchasing officer for the agency.~~]

(c) The authority to authorize a purchase under a contract made by another state agency other than the TBPC [~~commission~~] resides with the director. If the director determines that a lower price and overall best value is available through the TBPC [~~commission~~] or the goods or services are already available through a contract administered by the TBPC [~~commission~~], it will so inform the requesting agency after receipt of the notification. Upon approval to use the other contract, the requesting agency shall utilize established purchasing procedures for the procurement.

(d) When a contract created by another agency fulfills an unmet need for more than one agency, the director may endorse the contract of the other agency as a TBPC [~~GSC~~] contract, and make it generally available to state agencies and other qualified ordering entities as appropriate.

§113.126. Purchasing from Interstate Compacts and Cooperative Agreements.

(a) Pursuant to Government Code, Section 2156.181, the TBPC [~~commission~~] may enter into compacts or cooperative purchasing agreements with one or more state governments, agencies of other states, or other governmental entities for the purchase of goods or services if the TBPC [~~commission~~] determines that entering into an agreement would be in the best interest of the state.

(b) Before entering into such compacts or cooperative purchasing agreements, the Director of [~~Central~~] Procurement [~~Services~~] shall present the proposal to the Executive Director [~~commission~~] for approval. The proposal must state why it is advantageous for the TBPC [~~commission~~] to authorize a compact or cooperative purchasing agreement with other states.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501659

Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 463-4257

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS
SUBCHAPTER C. STANDARDS AND PROCEDURES FOR MANAGEMENT OF ELECTRONIC RECORDS

13 TAC §6.91

The Texas State Library and Archives Commission proposes amendments to 13 TAC §6.91 relating to standards and procedures for the management of electronic records by state agencies by state agencies.

The proposed amendments change the definitions of an electronic state record and a state record to conform the definitions to both definitions of a state record in Government Code, Chapter 441. The definition of a state record in Government Code, §441.031, is different from that in Government Code, §441.180, in that the former includes an exception for most records associated with alternative dispute resolution procedures from the definition of a state record.

The amended sections are proposed under Government Code, §441.189, which permits the Texas State Library and Archives Commission to adopt rules relating to the creation and storage of electronic state records.

Michael Heskett, state records administrator, has determined that for each year of the first five years after adoption of the proposed amendments, there will be no fiscal implications for local governments as a result of the adoption of the amendments because the proposed amendments are not applicable to local governments. Mr. Heskett anticipates that there will be no cost savings to state agencies that are subject to the proposed amendments during the first five years after rule adoption.

Mr. Heskett does not anticipate either a loss of, or an increase, in revenue to state or local government as a result of the proposed amendments. There will be no impact on small or micro businesses as a result of enforcing the rules. There will be no anticipated economic cost to persons or individuals who are required to comply. The public benefit of the proposed amendments is to help lessen confusion among state agencies concerning the status of alternative dispute resolution records as state records.

Written comments on the proposed amendments may be submitted to Tim Nolan, State and Local Records Management Division, Texas State Library and Archives Commission, Box 12927, Austin, TX 78711; or tim.nolan@tsl.state.tx.us; or by fax to (512) 323-6100.

Government Code, §441.189, is affected by the proposed rules.

§6.91. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections shall have the meanings defined in the Government Code, §441.180.

(1) - (4) (No change.)

(5) Electronic state record--Information that meets the definition of a state record in the Government Code, §441.031 and §441.180, and is maintained in electronic format for computer processing, including the product of computer processing of the information.

(6) (No change.)

(7) State record--As defined by the Government Code, §441.180(11), any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents activities in the conduct of state business or use of public resources. The term does not include library or museum material made or acquired and maintained solely for reference or exhibition purposes; an extra copy of recorded information maintained only for reference; or a stock of publications or blank forms. As provided by the Government Code, §441.031, the term also does not include any records, correspondence, notes, memoranda, or documents, other than a final written agreement described by §2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

(8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 21, 2005.

TRD-200501654
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 463-5459

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS
SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION AND OFF-CAMPUS INSTRUCTION FOR PUBLIC COLLEGES AND UNIVERSITIES

19 TAC §§4.101 - 4.108

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§4.101 - 4.108, concerning the applicability of Board rules to extension and out-of-state courses and programs. Specifically, these rules are being proposed for repeal in order that new sections being proposed simultaneously may address issues of organization and clarity.

Dr. Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Raney has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the improved notification given to institutions near proposed extension locations and the guarantee that extension, correspondence, and out-of-state courses and programs meet quality standards and do not diminish on-campus offerings. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed repeal of the rules may be submitted to Carol Raney, Ph.D., Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Carol.Raney@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education, and approve off-campus courses for credit offered by public institutions.

The repeals affect Texas Education Code, §61.002; and Texas Education Code, §61.051

§4.101. Purpose.

§4.102. Authority.

§4.103. Definitions.

§4.104. General Provisions.

§4.105. Standards and Criteria for Distance Education and Off-Campus Instruction.

§4.106. Institutional Plan for Distance Education and Off-Campus Instruction.

§4.107. Distance Education and Off-Campus Course and Program General Provisions.

§4.108. Out-of-State and Foreign Course and Program General Provisions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501674
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION, OFF-CAMPUS, AND EXTENSION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.101 - 4.108

The Texas Higher Education Coordinating Board proposes new §§4.101 - 4.108, concerning the applicability of Board rules to extension and out-of-state courses and programs. Specifically, the new sections specify that extension (non-formula-funded) courses are subject to Board rules, as are courses and programs offered by Texas public institutions outside the state and country. Correspondence courses are brought under these rules and may now be funded through state formula or extension charges. The proposed rule will ensure that all these courses and programs meet quality standards and that these offerings do not negatively affect on-campus courses and programs. The new sections also removes the definition of distance education the restriction that the courses be taken by students away from a senior institution's main campus or outside the taxing district of a community college.

Dr. Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Raney has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the improved notification given to institutions near proposed extension locations and the guarantee that extension, correspondence, and out-of-state courses and programs meet quality standards and do not diminish on-campus offerings. The change to the distance education definition means that the enrollment of on-campus or in-district students in electronically delivered courses will be reported by the appropriate mode of delivery. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Carol Raney, Ph.D., Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Carol.Raney@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The new rules are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; §61.051,

which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education and approve no off-campus courses for credit offered by public institutions.

The new rules affect Texas Education Code, §61.002; and Texas Education Code, §61.051

§4.101. Purpose.

This subchapter provides guidance to all public institutions of higher education in Texas regarding the delivery of distance education, off-campus, and on-campus extension courses and programs. The Board's goals are to ensure the quality of these courses and programs and to provide Texas residents with access to distance education, off-campus, and extension courses and programs that meet their needs. The rules are designed to assure the adequacy of the technical and managerial infrastructures necessary to support these courses and programs.

§4.102. Authority.

Authority for these provisions is provided by Texas Education Code, §61.051(j), which provides the Board with the authority to approve courses for credit, distance education, and extension programs.

§4.103. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Academic credit course--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving a degree, diploma, certificate, or other formal award.

(2) Board--The Texas Higher Education Coordinating Board.

(3) Commissioner of Higher Education or Commissioner--The chief executive officer of the Texas Higher Education Coordinating Board.

(4) Community College--Any public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(5) Continuing Education Unit or CEU--Ten contact hours of participation in an organized educational experience under responsible sponsorship, capable direction, and qualified instruction and not offered for academic credit.

(6) Correspondence course--An academic credit course delivered through distance education that is either paper-based or electronic and that is largely self-paced.

(7) Course--A class offered for academic credit.

(8) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", and "doctor's" and their equivalents and foreign cognates, which signifies satisfactory completion of the requirements of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(9) Distance education course--Course in which the majority of the instruction occurs when the students and instructor are not in the same physical setting. A course is considered to be offered by distance education if students receive more than one-half of the instruction at a different location than the instructor. A distance education course can be delivered synchronously or asynchronously to any single or multiple location(s) through electronic, correspondence, or other means. The course may be formula-funded or offered through extension, and it may be delivered to on-campus students and those who do not take courses on the main campus.

(10) Distance education degree or certificate program--A program in which a student may complete more than one-half of the semester credit hours required for the program through any combination of electronic and off-campus delivery methods.

(11) Electronic delivery--A mode of delivery for distance education courses and programs using electronic telecommunication technology systems.

(12) Extension courses and programs--Academic credit courses and programs delivered face-to-face or by distance education, including correspondence, whose semester credit hours are not submitted for formula funding. Face-to-face, academic credit extension courses and programs may be delivered on-campus or off-campus. This term does not apply to courses and programs delivered by community colleges to an extension center or extension facility unless the semester credit hours in the courses are not formula funded.

(13) Extension Center or Extension Facility--Any single or multiple location other than the main campus of a community college district and outside the boundaries of the taxing authority of a community college district.

(14) First-Professional Degree--An award that requires completion of a program that meets all of the following criteria:

(A) completion of the academic requirements to begin practice in the profession;

(B) at least 2 years of college work prior to entering the program; and

(C) a total of at least 6 academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself. First-Professional degrees are discipline-specific.

(15) Formula funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(16) Formula funded course--An academic credit course delivered face-to-face or by distance education, including correspondence, whose semester credit hours are submitted for formula funding.

(17) Governing board--The body charged with policy direction of any public community college district; the technical college system; public state college; public senior college, university, or health-related institution; career school or college; or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(18) Institution of higher education or Institution--Any public technical institute, public community college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(19) Higher education center--A Multi-Institutional Teaching Center, University System Center, or single institution center established by the Legislature or approved by the Board for the specific purpose of offering upper-division and graduate academic credit courses and programs from the parent institution(s). Higher education centers are of a larger size and offer a broader array of courses and programs than higher education teaching sites. They have minimal administration and (usually) locally provided facilities.

(20) Higher education teaching site--An off-campus, upper-division and graduate teaching location that promotes access in an

area not served by other public universities. Teaching sites offer a very limited array of courses and/or programs and do not entail a permanent commitment for continued service. Institutions do not own the facilities for teaching sites nor do they receive state support to acquire or build facilities for them. Board approval or recognition is not required.

(21) Private or independent institution of higher education or Independent Institution--A private or independent college or university as defined in the Texas Education Code, §61.003(15).

(22) Institutional Report--A report describing distance education and off-campus instruction delivered for academic credit.

(23) Main campus--The headquarters of an institution and the location where the principal or chief executive's offices are located, also referred to as on-campus.

(24) Off-campus course--Course in which one-half or more of the instruction is delivered with the instructor and student in the same physical location and which meets one of the following criteria: for public senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the taxing district. The course may receive formula-funding or be given by extension.

(25) Off-campus degree or certificate program--A program for which a student may complete more than one-half of the required credit hours by taking off-campus courses.

(26) Out-of-state/out-of-country courses and programs--Academic credit courses and programs delivered outside Texas to individuals or groups who are not regularly enrolled, on-campus students. Out-of-state and out-of-country courses do not receive formula funding and are a type of academic credit extension offering. They may be offered through distance education or face-to-face instruction.

(27) Peer institution--A university, health-related institution, independent institution, or higher education center which is within a 50-mile radius of a proposed off-campus instruction site.

(28) Program or Program of study--Any grouping of courses which are represented as entitling a student to a degree or certificate.

(29) Public health-related institution or Health-related institution--a medical or dental unit as defined by the Texas Education Code, §61.003(5).

(30) Public university or University--a general academic teaching institution as defined by the Texas Education Code, §61.003(3).

(31) Regional Council--A cooperative arrangement among representatives of all public, private or independent institutions of higher education within a Uniform State Service Region, as established under Texas Education Code, §51.662.

(32) Regular on-campus student--A student who is admitted to an institution, the majority of whose semester credit hours are reported for formula funding, and whose coursework is primarily taken at an institution's main campus.

(33) Semester credit hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(34) Service area--The territory served by a community college district as defined in Texas Education Code, §130.161.

(35) Study-in-America courses--Academic credit instruction delivered outside Texas but in the United States primarily to regular on-campus students.

(36) Study-Abroad courses--Academic credit instruction delivered outside the United States primarily to regular on-campus students.

(37) Workforce continuing education course--A course of ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objective and supported by state appropriations. A workforce continuing education course differs from a community service course, which is not eligible for state reimbursement and is offered for recreational or avocational purposes.

§4.104. General Provisions.

(a) This subchapter governs the following types of instruction offered by institutions of higher education:

(1) Academic credit courses, degree and certificate programs, and formula-funded workforce continuing education provided by a community college through distance education or outside of the boundaries of its taxing district through off-campus instruction;

(2) Academic credit courses, and degree and certificate programs provided by a senior college or university or health-related institution through distance education; off-campus instruction; or on-campus, off-campus or electronic extension;

(3) Academic credit courses, degree and certificate programs, and formula-funded workforce continuing education provided by a public technical college or Lamar state college through distance education or off-campus instruction;

(4) Academic credit courses and programs offered outside Texas by institutions of higher education, including Study-Abroad, Study-in-America, out-of-state, and out-of-country courses;

(5) Extension courses and programs that are offered through distance education or off-campus instruction are covered under this subchapter's provisions concerning distance education or off-campus instruction, even though they may not be submitted for formula funding.

(b) This subchapter does not apply to the following types of instruction:

(1) Non-credit adult and continuing education courses provided through distance education, off-campus delivery, or given by on-campus extension by a senior college or university or health-related institution;

(2) Continuing education, except formula-funded workforce continuing education, provided by community colleges, Lamar state colleges, and public technical colleges.

§4.105. Functions of Regional Councils.

(a) Universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(b) Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(c) In the event of a dispute arising from electronic delivery of lower-division courses, any institution party to the disagreement may

appeal first to the Regional Council, and then to the Commissioner and the Board.

(d) Regional Councils in each of the ten Uniform State Service Regions shall make recommendations to the Commissioner and shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(e) Each Regional Council shall make recommendations to the Commissioner regarding off-campus courses and programs proposed for delivery within its Uniform State Service Region in accordance with the consensus views of Council members, except for courses and programs proposed to be offered by public community colleges in their designated service areas.

(f) Regional Councils shall advise the Commissioner on appropriate policies and procedures for effective state-level administration of off-campus lower-division instruction.

§4.106. Institutional Report for Distance Education, Off-Campus Instruction, and On-Campus Extension Programs.

(a) Prior to offering any distance education, off-campus, or on-campus extension courses or programs for the first time, institutions of higher education shall submit an Institutional Report for Distance Education, and Off-Campus and On-Campus Extension Instruction to the Board for approval. The Commissioner shall provide guidelines for development of the report and a schedule for periodic submission of updated reports.

(b) Institutional academic and administrative policies shall reflect a commitment to maintain the quality of distance education, off-campus, and on-campus extension courses and programs in accordance with the provisions of this subchapter. An Institutional Report shall conform to Board guidelines and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools in effect at the time of the Report's approval. These criteria shall include provisions relating to:

(1) Institutional Issues;

(2) Educational Programs;

(3) Faculty;

(4) Student Support Services; and

(5) Distance Education Facilities and Support.

§4.107. Standards and Criteria for Distance Education, Off-Campus Instruction, and On-Campus Extension Courses and Programs.

(a) The following provisions apply to all programs and courses covered under this subchapter, unless otherwise specified:

(1) Each course and program offered under the provisions of this subchapter shall be within the role and mission of the institution responsible for offering the instruction. Each course shall be on the offering institution's inventory of approved courses, and each program shall be on the offering institution's inventory of approved programs.

(2) Prior approval may be required before an institution may offer courses and programs under the provisions of this subchapter in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) The Commissioner shall establish procedures governing the quality, review and approval of distance education, off-campus, and on-campus extension courses and programs.

(4) The Commissioner may require institutions to provide special reports on distance education, off-campus, out-of-state/country, and on-campus extension courses and programs.

(b) The following provisions apply to all programs covered under this subchapter, unless otherwise specified:

(1) An institution shall not offer doctoral or first-professional degree programs by distance education, off-campus, and/or on-campus extension instruction without specific prior approval by the Board. The Commissioner may approve for delivery to other off-campus sites or by other delivery modes doctoral and special professional degree programs that have previously been approved by the Board for electronic or off-campus delivery.

(2) An institution offering a degree or certificate program under the provisions of this subchapter shall comply with relevant procedures and rules of the appropriate regulatory or accrediting agency or professional certification board.

(3) Each degree program offered by distance education, off-campus instruction, or on-campus extension shall be approved by an institution's governing board. A certification concerning each of these degree programs shall be submitted to the Board. The certification shall be provided in accordance with provisions and schedules determined by the Commissioner. For baccalaureate and graduate off-campus programs and for on-campus extension programs, the parent institution shall notify all potentially affected peer institutions as determined by the Commissioner.

(4) Institutions shall require that students (except for students in out-of-country programs) enrolled in a distance education, off-campus, or on-campus extension degree program satisfy the same requirements for admission to the institution and the program as required of regular on-campus students. Students in degree programs to be offered collaboratively shall meet the admission standards of their home institution. Out-of-country students shall meet equivalent standards for admission into programs.

(c) The following provisions apply to all courses covered under this subchapter, unless otherwise specified:

(1) Except for out-of-state/country courses, institutions shall provide notification of each course offered by distance education, off-campus, or on-campus extension instruction under the provisions of this subchapter in accordance with provisions and schedules determined by the Commissioner. Institutions specifically shall provide notification to peer institutions of off-campus courses and on-campus extension courses.

(2) Institutions shall report distance education and off-campus courses submitted for formula funding in accordance with the Board's uniform reporting system and the reporting provisions of this subchapter.

(3) Institutions may submit for formula funding the following types of academic credit courses: distance education courses delivered to Texas and non-Texas residents located on-campus or at another location in Texas, distance education courses delivered to Texas residents located out of state or out of country; Study-Abroad courses, and Study-in-America courses.

(4) Institutions shall not submit the following types of courses for formula funding:

(A) distance education courses taken by non-resident students who are located out of state or out of country,

(B) courses in out-of-state or out-of-country programs, as defined above, taken by any student, or

(C) extension courses.

(5) For courses not eligible to be submitted for formula funding, institutions shall charge fees that are equal to or greater than

Texas resident tuition and applicable fees, and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs.

(6) Study-in-America and Study-Abroad courses offered by institutions of higher education, or by an approved consortium composed of Texas public institutions, shall be approved by the Commissioner in order for the semester credit hours or contact hours generated in those courses to receive formula funding. The Commissioner shall develop procedures and standards for Study-in-America and Study-Abroad offerings.

(7) All courses covered under this subchapter shall meet the quality standards applicable to on-campus courses. They shall also adhere to the following guidelines and standards:

(A) Courses which offer either academic credit or Continuing Education Units shall do so in accordance with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

(B) Except for students in out-of-country courses, students shall satisfy the same requirements for enrollment in an academic credit course as required of on-campus students. Out-of-country students shall be assessed for academic guidance purposes.

(C) Faculty shall be selected and evaluated by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses.

(D) Institutions shall provide training and support to enhance the added skills required of faculty teaching courses through electronic means.

(E) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation of student progress.

(F) Faculty for graduate-level courses shall be approved in the same manner as graduate faculty for on-campus courses.

(G) All courses shall be appropriately integrated with the entity or entities administering the corresponding on-campus courses. The supervision, monitoring, and evaluation processes for instructors shall be equivalent to those for on-campus courses.

(H) Students shall be provided academic support services appropriate for distance education and off-campus learners--including academic advising, career counseling, library and other learning resources, and financial aid.

(I) Facilities (other than homes as distance education reception sites) shall be comparable in quality to those for on-campus courses.

(J) Institutions shall adhere to additional criteria outlined in the Guidelines for Institutional Reports for Distance Education and Off-Campus Instruction.

§4.108. Non-Formula-Funded (Extension) Course and Program General Provisions.

(a) Institutions shall not submit non-state-funded lower-division credit courses to Regional Councils.

(b) Institutions shall not submit distance education courses delivered outside the state to non-Texas residents for formula funding.

(c) The Commissioner shall develop standards for institutions offering out-of-state/country courses and programs.

(d) Institutions shall not jeopardize or diminish the status of formula-funded on-campus courses and programs in order to offer extension courses. Extension courses shall not be a substitute for offering a sufficient number of formula-funded on-campus courses.

(e) Institutions shall report fees received for extension and out-of-state/country courses in accordance with general institutional accounting practices.

(f) Institutions shall report enrollments, courses and graduates associated with extension offerings as required by the Commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501673
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER W. EDUCATIONAL LOAN REPAYMENT PROGRAM FOR ATTORNEYS EMPLOYED BY THE OFFICE OF THE ATTORNEY GENERAL

19 TAC §§21.710 - 21.717

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§21.710 - 21.717, concerning the Conditional Loan Repayment Program for Attorneys Employed by the Office of the Attorney General. The Office of General Counsel concluded that, due to numerous changes to the sections, it would be more efficient to repeal the whole subchapter and propose all new sections.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years that the sections are in effect, there will be no public benefit anticipated. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §61.9729, which authorizes the Coordinating Board to adopt rules necessary for the administration of Subchapter DD of the Texas Education Code, concerning the Repayment of Certain Education Loans Owed by Certain State Attorneys.

The repeals affect the Texas Education Code, §§61.9729 - 61.9732.

§21.710. Authority, Scope, and Purpose.
§21.711. Definitions.
§21.712. Priorities of Application Acceptance.
§21.713. Eligible School of Law.
§21.714. Eligible Attorney.
§21.715. Eligible Education Loan.
§21.716. Education Loan Repayments.
§21.717. Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501683
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§21.710 - 21.716

The Texas Higher Education Coordinating Board proposes new §§21.710 - 21.716, concerning the Education Loan Repayment Program for Attorneys Employed by the Office of the Attorney General. Specifically, the proposed new sections would provide for a more efficient application process and allow for appropriate expertise in selecting applicants to receive loan repayment.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to increase the retention of attorneys employed by the Attorney General's Office. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.9729, which authorizes the Coordinating Board to adopt rules necessary for the administration of Subchapter DD of the Texas Education Code, concerning the Repayment of Certain Education Loans Owed by Certain State Attorneys.

The new sections affect the Texas Education Code, §§61.9729 - 61.9732.

§21.710. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter X, Repayment of Certain Education Loans Owed by Certain State Attorneys. These rules establish procedures to administer the program as prescribed in the Texas Education Code, §§61.9721 - 61.9732.

(b) Purpose. The purpose of the Education Loan Repayment Program for Attorneys Employed by the Office of the Attorney General is to recruit and retain attorneys in the Office of the Attorney General of the State of Texas.

§21.711. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Attorney General--The Office of the Attorney General of the State of Texas (OAG).

(2) Board--The Texas Higher Education Coordinating Board.

(3) Commissioner--The Texas Commissioner of Higher Education.

(4) Program--The Education Loan Repayment Program for Attorneys Employed by the Office of the Attorney General.

(5) Eligible School of Law--a School of Law in Texas which is accredited by the American Bar Association.

(6) Institution or Institution of Higher Education--an institution of higher education as defined in Texas Education Code, §61.003(8) or a private or independent institution of higher education, as defined in Texas Education Code, §61.003(15).

§21.712. Application Review Committee.

The Board shall rely on the recommendations of an application review committee in making awards of repayment assistance. The committee shall be composed of a minimum of three attorneys who are, at the time of the application review, employed by the Office of the Attorney General. Additional members may include attorneys employed by either the Office of the Attorney General or by the State Bar of Texas. The purpose of the committee shall be to:

(1) advise the Board on appropriate rules for the Program;

(2) advise the Board on the amount of money needed to adequately fund the Program;

(3) advise the Board on the format and content of the applications for repayment;

(4) assist the Board in the dissemination of information about the Program;

(5) prepare an application scoring tool for use in selection and referral of eligible applicants for acceptance into the program. The scoring tool shall establish the priorities among the various criteria for consideration of application approval, taking into consideration the current needs of the Office of the Attorney General for recruitment and retention of eligible attorneys;

(6) evaluate each applicant separately, using the scoring tool to rank qualified applicants for award; and

(7) select and refer applicants to the Board for awarding of loan repayment assistance.

§21.713. Application Approval.

Approval of applicants will depend upon the availability of funds, and the recommendations of the Application Review Committee.

§21.714. Eligible Attorney.

To be eligible for loan repayment assistance, an applicant must:

(1) be licensed by the State Bar of Texas at the time application is made;

(2) submit a completed application to the Office of the Attorney General on or before the annual deadline of December 1 of each year;

(3) have been employed for at least one year by the Office of the Attorney General and be employed as an Assistant Attorney General I - III at the time that the application is submitted;

(4) have been employed for fewer than five years by the Office of the Attorney General at the time that the application is submitted;

(5) be in good standing with the State Bar of Texas and the Office of the Attorney General; and

(6) have not received more than two previous awards of annual repayment assistance under this Program.

§21.715. Eligible Education Loan.

An eligible education loan is one that:

(1) was obtained through a lender for purposes of attending an eligible school of law or for undergraduate education at an institution of higher education, or was obtained though a lender for purposes of consolidating education loans,

(2) does not entail a service obligation and is not being repaid through another loan repayment program,

(3) is not an education loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a relative,

(4) is not in default at the beginning of the service period, and

(5) is evidenced by a promissory note or other writing signed by the participant which explicitly requires the loan proceeds to be used to pay for costs incurred for attendance at a public or private institution of higher education.

§21.716. Education Loan Repayments.

The Application Review Committee shall inform the Board when applicants have satisfactorily met all eligibility requirements and have been selected for an award, and the Board shall arrange for the disbursement of the award. Eligible education loans shall be paid once an award once a year under the following conditions:

(1) the annual award shall be:

(A) co-payable to the attorney and the holder(s) of the loan(s), and forwarded to the applicant to submit to his or her holder; or

(B) made payable to the holder and forwarded directly, or sent by electronic funds transfer (EFT) to the holder by the Board;

(2) the annual award amount shall be determined by the Commissioner, with input from the Application Review Committee, but shall not exceed $6,000; and

(3) repayments shall be applied in the manner that is usual and customary for the holder.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501684
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §21.1083

The Texas Higher Education Coordinating Board proposes amendments to §21.1083, concerning the Educational Aide Exemption Program. Specifically, the proposed amendments would emphasize that an educational aide must have been employed full time as an educational aide for at least one of the past five years in order to be eligible for the exemption.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be to acknowledge the significance of experience as an educational aide by requiring that experience to be full-time. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules as necessary to implement this section.

The amendments affect the Texas Education Code, Chapter 54, Subchapter D, §54.214.

§21.1083. Eligible Students.

To receive an award through the Educational Aide Exemption Program, a student must:

(1) be a resident of Texas;

(2) have at least one school year of experience as a full-time [~~an~~] educational aide during the five years preceding the term or semester for which the student receives the exemption;

(3) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501682

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER I. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENT SCHOLARSHIP PROGRAM

19 TAC §§22.162, 22.166, 22.167

The Texas Higher Education Coordinating Board proposes amendments to §§22.162, 22.166, and 22.167 concerning the Fifth-Year Accounting Student Scholarship Program. Specifically, the proposed amendments to §22.162 would eliminate unnecessary definitions and add a definition of "Institution." The proposed amendment to §22.166 would reflect the inclusion of race/ethnicity in the allocation formulae. The proposed amendments to §22.167 would change the administration of the program from a centrally processed one to a campus-based program, streamline operations at the Coordinating Board, add consistency to the way programs are administered, and provide the Coordinating Board additional control over unexpended funds.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to the state. There will be no fiscal implications to local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections would be simplification of program administration for institutions. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.753, which authorizes the Coordinating Board to establish and administer scholarships for fifth-year accounting students.

The amendments affect Texas Education Code, §§61.751 - 61.758.

§22.162. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

[~~(2) Central processing--An approach to administering a scholarship program by having institutions submit application information to the Board, which then issues funds to students in keeping with a schedule specified by the institution in the application data.~~]

(2) [~~(3)~~] Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) [~~(4)~~] Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

[~~(5) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.~~]

(4) [~~(6)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(5) [~~(7)~~] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(6) [~~(8)~~] Half-time student--For undergraduates, a person who is enrolled or is expected to be enrolled for the equivalent of six or more semester credit hours. For graduate students, a person who is enrolled or expected to be enrolled for the equivalent of 4.5 or more semester credit hours.

(7) Institution--Public and private or independent institutions of higher education as defined in Texas Education Code, §61.003.

[~~(9) Issue date--The date on which the Board's centralized processing system generates a voucher requesting a grant disbursement for specific students.~~]

(8) [~~(10)~~] Period of enrollment--The term or terms within the current state fiscal year (September 1-August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through the program described in this chapter.

(9) [~~(11)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(10) [~~(12)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§22.166. Allocations and Reallocations.

(a) Allocations. The Board, with the assistance of the Advisory Committee, shall develop a formula for allocating funds to participating institutions in a way to best fulfill the goals of the program. At a minimum, the total number of accounting degrees issued and the number of African-American and Hispanic students who receive accounting degrees at each participating institution shall be considered in determining the allocation formula. [~~One third of the funds allocated to participating institutions shall be allocated by the Board in proportion~~

~~to each institution's number of students graduating with degrees in accounting in the previous year. Two thirds of the funds will be allocated based on the number of students reported to have significant amounts of financial need via each institution's prior year Financial Aid Database Report.~~]

(b) Reallocations. Unless otherwise indicated, institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber all funds allocated to them. On that date, institutions lose claim to any unencumbered funds and the unencumbered funds are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

§22.167. Disbursements to Institutions.

Requests for program funds for eligible students shall be made by the Program Officer and program funds, up to the maximum allocation for the institution, shall be disbursed to the institution for immediate release to the students or immediate application to the students' accounts at the institution. Requests for program funds may be made at any time during the academic year prior to the reallocation deadline.

[~~(a) Public Universities and Technical Colleges. Funds allocated to each institution will be transferred to a cost center at the State Comptroller's Office, to be drawn down by the institution as needed to cover local awards.~~]

[~~(b) Private and Independent Institutions and Public Community Colleges. Funds allocated to each institution will be accessed through the Board. Program officers will submit applications for eligible students to the Board, which will issue state warrants for the students in accordance with disbursement schedules on the applications.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501679
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§22.168 - 22.172

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§22.168 - 22.172 concerning the Fifth-Year Accounting Student Scholarship Program. Specifically, the proposed repeal would allow institutions to administer the program as a campus-based program and would eliminate the need for §22.168, titled "Adjustments to Awards Made through Central Processing." Deleting §22.168 necessitates repealing §§22.168 - 22.172 in order that the remaining sections may be renumbered.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the sections would be to improve the administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §61.753, which authorizes the Coordinating Board to establish and administer scholarships for fifth-year accounting students.

The repeal affects the Texas Education Code, §§61.751 - 61.758.

§22.168. Adjustments to Awards Made through Central Processing.
§22.169. Retroactive Disbursements.
§22.170. Advisory Committee.
§22.171. Reporting Requirements.
§22.172. Dissemination of Information and Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501681
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§22.168 - 22.171

The Texas Higher Education Coordinating Board proposes new §§22.168 - 22.171 concerning the Fifth-Year Accounting Student Scholarship Program. Specifically, the proposed new sections reflect the necessary renumbering as a result of deleting the section titled "Adjustments to Awards Made through Central Processing."

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections would be to improve the administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.753, which authorizes the Coordinating Board to establish and administer scholarships for fifth-year accounting students.

The new sections affect the Texas Education Code, §§61.751 - 61.758.

§22.168. Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(1) owes funds to the institution for the period of enrollment for which the award is being made; or

(2) received a student loan that is still outstanding for the period of enrollment for which the award is being made.

(b) Funds that are disbursed retroactively must either be used to pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.169. Advisory Committee.

(a) The Board shall appoint an advisory committee to advise the Board concerning assistance provided under this subchapter to fifth-year accounting students.

(1) The advisory committee shall consist of:

(A) a chair named by the Board;

(B) one representative named by the Texas State Board of Public Accountancy;

(C) one representative named by the Texas Society of Certified Public Accountants;

(D) a Texas representative of the American Accounting Association named by that organization;

(E) one representative named by the National Association of Black Accountants;

(F) one representative named by the American Association of Hispanic Certified Public Accountants; and

(G) two representatives named by the Board who are the chairs of accounting departments at Texas colleges and universities, at least one of whom must be a representative of a private college or university and at least one other of whom must be a representative from a college or university that primarily serves minority students.

(2) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(b) The duties of the advisory committee shall be to advise the Board on:

(1) how the scholarships provided for under this subchapter should be established and administered to best promote the public purpose of the scholarships;

(2) the amount of money needed to adequately fund the scholarship program;

(3) setting priorities among the factors identified by Section 22.164(b) of this title (relating to Eligible Students).

§22.170. Reporting Requirements.

Before January 15 of each odd-numbered year, the Board shall report to the Legislature concerning the scholarship program. The report must include:

(1) the number and amount of scholarships awarded in the two calendar years preceding the year in which report is due; and

(2) the number of minority students, by racial or ethnic background, who have been awarded scholarships during that two-year period.

§22.171. Dissemination of Information and Rules.

The Board is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501680
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 21, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1025

The Texas Education Agency (TEA) proposes an amendment to §61.1025, concerning the Public Education Information Management System (PEIMS). The section defines the standards by which school districts and charter schools are to submit required information. The section also specifies the review process when data elements are added, deleted, or modified, providing consistency in updates to the PEIMS standards. The proposed amendment would clarify the description of the TEA's data collection and reporting systems. This clarification would provide the additional flexibility needed to determine the best methods to collect and report data to meet state and federal statutory requirements.

Through 19 TAC §61.1025, adopted to be effective May 30, 2001, the commissioner exercised rulemaking authority over PEIMS as authorized by TEC, §42.006. The proposed amendment to 19 TAC §61.1025, Public Education Information Management (PEIMS) Data Standards, would add new subsection (a) establishing what data comprise PEIMS; revise subsection (b) by clarifying the broader description of data standards; modify subsection (c) by updating and refining the description of the external review process; and add new subsection (d) delineating the TEA's internal review process. The proposal would also include changing the section title to Public Education Information Management System (PEIMS) Data and Reporting Standards.

Criss Cloudt, associate commissioner for accountability and data quality, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications

for state and local government as a result of enforcing or administering the amendment.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be updated information for determining the appropriate data collection methods necessary to meet state and federal reporting requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code (TEC), §42.006, which authorizes the commissioner of education, in reviewing and revising the Public Education Information Management System (PEIMS), to develop rules to ensure that the PEIMS meets the requirements specified in TEC, §42.006(c)(1) - (3) and (d).

The amendment implements the Texas Education Code, §42.006.

§61.1025. Public Education Information Management System (PEIMS) Data and Reporting Standards.

(a) Data submissions. The Public Education Information Management System (PEIMS) consists of all data submitted by school districts, charter schools, campuses, and other educational organizations and entities to the Texas Education Agency (TEA).

(b) [~~(a)~~] Standards. Data [~~The Public Education Information Management System (PEIMS) data~~] standards, established by the commissioner of education under Texas Education Code (TEC), §42.006, shall be used by school districts and charter schools to submit information required for the legislature and the TEA [~~Texas Education Agency (TEA)~~] to perform their legally authorized functions. Data [~~The PEIMS data~~] standards shall be [~~annually~~] published annually in [~~an~~] official TEA publications [~~publication~~]. These publications [~~This publication~~] shall be widely disseminated and include:

(1) descriptions [~~a description~~] of the [~~PEIMS~~] data collections and submission [~~reporting~~] requirements;

(2) descriptions of data elements and the codes used to report them;

(3) detailed responsibilities of school districts, education service centers, and the TEA in connection with the data submission processes [~~process~~], including each deadline for submission and resubmission; and

(4) descriptions of the data submission requirements, including submission record layout specifications and data edit specifications.

(c) [~~(b)~~] External review [~~Review~~] process. The commissioner shall establish a [~~Policy Committee on Public Education Information (PCPEI) is a commissioner's~~] policy advisory group that provides oversight of data collections and reporting standards policies. The policy advisory group membership shall be [~~an oversight role for addressing policy issues related to PEIMS data collection. PCPEI membership is~~] composed of representatives of school districts, charter schools, education service centers, state government, and educational associations. Subcommittees [~~The Information Task Force (ITF), a subcommittee of PCPEI~~] consisting of technical experts and [~~,~~] representatives from user groups may be established by the commissioner to provide [~~, and TEA staff, provides~~] timely and impartial reviews [~~review~~] of requested changes or additions [~~addition~~] to TEA data collections and reporting standards [~~PEIMS~~]. The procedure for adding, deleting, or modifying data elements described in paragraphs (1) - (5) of this subsection provides consistency in updates to the [~~PEIMS~~] data and reporting standards. The commissioner may approve changes to the [~~PEIMS~~] data and reporting standards outside this process if necessary to expedite implementation of data collections and reporting [~~collection~~].

(1) Prepare proposal. A written proposal is prepared to add, delete, or modify [~~a PEIMS~~] data elements [~~element~~]. The proposal provides justification for the data collection, determination of data availability, and definitions of critical attributes and required analyses of requested data elements.

(2) Conduct research. Survey a sampling of districts to update and refine cost estimates, assess district burden, and determine any benefits from a pilot of the data collection.

(3) Solicit feedback. The subcommittee(s) established by the commissioner [~~ITF~~] and other appropriate TEA [~~agency~~] committees review proposals and make formal, written recommendations to the policy advisory group [~~PCPEI~~]. The policy advisory group [~~PCPEI~~] reviews proposals and committee recommendations and makes recommendations to the commissioner for approval, modification, or rejection of the proposed changes.

(4) Collect data. Data [~~The PEIMS data~~] standards and [~~edit~~] software made available to districts online are updated annually, implementing changes to data submissions requirements.

(5) Reevaluate data requirements. All [~~PEIMS~~] data elements are reviewed by the commissioner-appointed subcommittee(s) and policy advisory group [~~ITF and PCPEI~~] on a three-year cycle as part of an ongoing sunset process. The sunset process is designed to ensure that [~~the PEIMS~~] data standards meet the requirements specified in TEC, §42.006(c)(1) - (3) and (d).

(d) Internal review process. The commissioner shall establish and determine the membership of a TEA committee that provides oversight of the TEA data collections and reporting policies. The commissioner shall also establish a TEA subcommittee that reviews data collections and reporting standards according to the requirements specified in TEC, §42.006(c)(1) - (3) and (d). The subcommittee is also responsible for maintaining data collections at the TEA. The procedure for adding, deleting, or modifying data elements described in subsection (c)(1) - (5) of this section provides consistency in updates to data and reporting standards. The commissioner may approve changes to data and reporting standards outside this process if necessary to expedite implementation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501675

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 92. INTERAGENCY COORDINATION

SUBCHAPTER AA. MEMORANDA OF UNDERSTANDING

19 TAC §92.1001, §92.1003

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §92.1001 and §92.1003, concerning memoranda of understanding. Section 92.1001 adopts by rule the memorandum of understanding for coordinated services to children and youth. Section 92.1003 adopts by rule the memorandum of understanding concerning the Communities In Schools program. The repeals are necessary because of changes in authorizing statutes.

The 71st Texas Legislature, 1989, passed Senate Bill 298, the original legislation that authorized a system of community resource coordination groups to coordinate services for children and youth. The commissioner of education exercised rulemaking authority to adopt 19 TAC §92.1001, Memorandum of Understanding for Coordinated Services to Children and Youth, effective October 5, 1998. The 77th Texas Legislature, 2001, passed Senate Bill 1468, legislation for coordinated services to children and youth that no longer mandates the memorandum of understanding (MOU) to be adopted by rule. Accordingly, this rule action proposes the repeal of 19 TAC §92.1001.

The Texas Family Code, Chapter 264, passed by the 76th Texas Legislature, 1999, required the TEA and the Texas Department of Protective and Regulatory Services (DPRS) to adopt an MOU into rule. The current commissioner rule, 19 TAC §92.1003, Memorandum of Understanding Concerning the Communities In Schools Program, was adopted to be effective October 1, 2000. The 78th Texas Legislature, 2003, passed Senate Bill 1038, transferring provisions of the Texas Family Code, Chapter 264, Subchapter I, to the Texas Education Code, Chapter 33, Subchapter E. The transfer of the Texas Family Code to the Texas Education Code transferred the Communities In Schools (CIS) program from the Department of Family and Protective Services (DFPS), formerly known as the DPRS, to the TEA. The current MOU between the TEA and the DPRS is no longer applicable. Accordingly, this rule action proposes the repeal of 19 TAC §92.1003.

Senate Bill 1038 specified that on September 1, 2003, a reference in law or administrative rule to the DPRS that relates to the CIS program means the TEA and that a reference in law or administrative rule of the executive director of the DPRS that relates to the CIS program means the commissioner of education. The legislation also stated that a rule of the DPRS relating to the CIS program continues in effect as a rule of the commissioner of education until superseded by rule of the commissioner of education. Accordingly, the commissioner of education has proceeded with the rulemaking process to adopt provisions for the CIS. Proposed new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter EE, Commissioner's Rules Concerning Communities In Schools Programs, was filed as proposed on April 18, 2005. Adoption of these new rules is scheduled to take effect in the summer of 2005.

Linda Crawford, director of interagency coordination, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals.

Ms. Crawford has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals would be the elimination of expired statutory requirements. The proposed repeal of the MOU for coordinated services to children and youth would eliminate an expired requirement in statute. The repeal of the existing MOU concerning the Communities In Schools program would eliminate expired provisions, as a result of the legislative transfer of the CIS program to TEA. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The repeals are proposed under Senate Bill 1468, 77th Texas Legislature, 2001, which no longer mandates that an MOU relating to coordinated services to children and youth be adopted by rule and Senate Bill 1038, 78th Texas Legislature, 2003, which transferred the Communities In Schools program to the TEA.

The repeals implement Senate Bill 1467, 77th Texas Legislature, 2001, and Senate Bill 1038, 78th Texas Legislature, 2003.

§92.1001. Memorandum of Understanding for Coordinated Services to Children and Youth.

§92.1003. Memorandum of Understanding Concerning the Communities In Schools Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501676
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1004

The Texas Education Agency (TEA) proposes new §97.1004, concerning adequately yearly progress (AYP). The proposed new §97.1004 would describe the procedures for determining AYP and adopt applicable excerpts, *Sections II-IV* of the *2004 Adequate Yearly Progress Guide*, dated September 2004.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state that is receiving Title I, Part A funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP Guide. Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. The intention is to annually update the rule to incorporate provisions from the most recently published AYP Guide.

The proposed new 19 TAC §97.1004 would establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. The proposed new rule would also adopt excerpts of the *2004 Adequate Yearly Progress Guide* that describe specific features of the system, AYP measures and standards, and appeals. The proposal would establish in rule the specific procedures for AYP. The commissioner would establish AYP provisions annually and communicate that information with school districts and charters. Applicable procedures would be adopted each year as annual versions of the AYP manual are published.

Criss Cloudt, associate commissioner for accountability and data quality, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the new section.

Dr. Cloudt has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be to inform the public of the AYP rating procedures for the public schools by including this rule in the *Texas Administrative Code*. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The new section implements the Texas Education Code, §§7.055(b)(32), 39.073, and 39.075(a)(4).

§97.1004. Adequate Yearly Progress.

(a) In accordance with the federal No Child Left Behind Act and Texas Education Code §§7.055(b)(32), 39.073, and 39.075, all public school campuses, school districts, and the state are evaluated for Adequate Yearly Progress (AYP). Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). The performance of a school district, campus, or the state is reported through indicators of AYP status established by the commissioner of education.

(b) The determination of AYP for school districts and charter schools in 2004 is based on specific criteria and calculations, which are described in excerpted sections of the 2004 AYP Guide provided in this subsection.
Figure: 19 TAC §97.1004(b)

(c) The specific criteria and calculations used in AYP are established annually by the commissioner of education and communicated to all school districts and charter schools.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501677
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH
SUBCHAPTER A. PROCEDURES AND POLICIES

25 TAC §§1.1, 1.3 - 1.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §1.1 and §§1.3 - 1.8, concerning procedures and policies of the Texas Board of Health (Board).

BACKGROUND AND PURPOSE

The repeal is necessary to comply with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.18 and §1.26, which abolished the Texas Department of Health and the Board. Repeal of these sections is necessary to align the department's rules more accurately with House Bill 2292.

SECTION-BY-SECTION SUMMARY

The repeal of §1.1 and §§1.3 - 1.8 is necessary to align the department's rules with the requirements of House Bill 2292 now that the Board no longer exists. As part of the repeal of those sections, §1.7(b)(4), concerning the commissioner of health's (now the commissioner of the department, pursuant to House Bill 2292) authority to execute contracts and delegate execution of contracts of greater than $1 million, is unnecessary as a rule because contract execution authority is now under the department's policies and is not required to be stated in a rule.

FISCAL NOTE

Cathy B. Campbell, General Counsel, Office of General Counsel, has determined that for each year of the first five-year period that the repeal will be in effect, there will be no fiscal implications to state or local government as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Campbell has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Campbell has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is more accurate alignment of department rules with House Bill 2292.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Sara Richardson, Legal Assistant, Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, ext. 6961. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed repeal is authorized by House Bill 2292, which abolished the Texas Department of Health and its governing board, the Texas Board of Health; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules reasonably necessary for the department to administer its regulatory and administrative functions.

The proposed repeal affects the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§1.1. Purpose.
§1.3. Organization of the Board of Health.
§1.4. General Powers and Duties of the Board of Health.
§1.5. Meetings of the Board of Health.
§1.6. Actions Requiring Board Approval.
§1.7. Commissioner of Health.
§1.8. Press and Public Relations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501664
Cathy Campbell
Director, Legal Services
Department of State Health Services
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT
SUBCHAPTER A. WAIVER OF VISA REQUIREMENT FOR PHYSICIANS

25 TAC §§13.1, 13.2, 13.5, 13.8

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§13.1, 13.2, 13.5, and 13.8, concerning waiver of visa requirements for physicians serving in health professional shortage areas, who apply to the J-1 visa waiver program.

BACKGROUND AND PURPOSE

The amendments are proposed to give the department more flexibility in determining appropriate practice locations for J-1 visa waiver physicians.

SECTION-BY-SECTION SUMMARY

Amendments to §13.1 remove the defined terms "fully served", "NHSC" and "primary care specialist" because these terms are

removed from §13.2. Amendments to §13.2 remove the 3000:1 or fewer physicians per capita provision and remove language concerning primary care specialists, psychiatrists and non-primary care specialists and the other terms deleted from the definitions in §13.1. Language is added that recommendations will be made in areas that meet shortage area requirements as identified by the program annually. Amendments to §13.5 clarify employment contract requirements concerning scheduled work hours and remove language concerning Education Code, §51.949, as this section is no longer applicable to the J-1 visa waiver program. Amendments to §13.8 also remove language concerning Education Code, §51.949.

FISCAL NOTE

Connie Berry, Program Manager for the Primary Care Office, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local governments as a result of administering the sections as proposed because the fee is not changed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Berry has also determined that there is no anticipated cost to small businesses or micro-businesses because the proposed amendments will affect only those professional associations that employ physicians, and will increase the pool of physicians from which they can recruit. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Connie Berry has also determined that for each year of the first five years the sections are in effect the public health benefit anticipated as a result of these rules will be greater access by physicians to the waiver process allowed by federal law, clear criteria for physicians who wish to serve this state in health professional shortage areas under these provisions, and a greater chance that physicians can be recruited to serve these areas as envisioned by state and federal law.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Connie Berry, Program Manager, Department of State Health Services, Texas Primary Care Office, 1100 West 49th Street, Austin Texas 78756, (512) 458-7518, connie.berry@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

These amendments are proposed under Health and Safety Code, §12.0127, which authorizes the department to request waiver of certain residence requirements for alien physicians who agree to practice in medically underserved areas; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules reasonably necessary for the department to administer its regulatory and administrative functions.

The proposed amendments affect Health and Safety Code, Chapters 12 and 1001, and Government Code Chapter 531.

§13.1. Definition of Terms.

The following words and terms when used in these sections, shall have the following meaning.

(1) Employer--A director of a health care facility where the physician will practice.

[~~(2) Fully Served--An area with a population to provider ratio of 3000:1 or more physicians per capita.~~]

(2) [~~(3)~~] HPSA--Health Professional Shortage Area.

(3) [~~(4)~~] J-1 Visa Waiver--Removal of the requirement that a J-1 visa holder must return to their country of origin for two years at the end of his/her graduate medical training. The waiver allows the J-1 visa holder to remain in the United States if they agree to practice in an underserved area.

(4) [~~(5)~~] MUA--Medically Underserved Area.

[~~(6) NHSC--National Health Service Corps.~~]

(5) [~~(7)~~] Operational--Providing health care services to patients.

[~~(8) Primary Care Specialist--A physician who has a degree and specialization in internal medicine, general practice, family practice, pediatrics, or obstetrics/gynecology.~~]

(6) [~~(9)~~] Provider--A physician requesting a J-1 visa waiver.

§13.2. J-1 Visa Waiver Rules.

[~~The following apply to faculty and non-faculty waivers.~~]

(a) [~~(1)~~] The [~~Texas~~] Department of State Health Services (department) will consider a recommendation for a J-1 visa waiver in the area or areas designated by the Secretary of Health and Human Services as a HPSA or a MUA and meet shortage area requirements as identified by the program annually. [~~are not fully served by J-1, NHSC or other primary care physicians. The HPSA or MUA must have a population to physician ratio of 3000:1 or fewer physicians per capita.~~]

[~~(2) Primary care specialists will be considered eligible to apply to areas designated as Primary Care HPSAs or MUAs.~~]

[~~(3) Psychiatrists will be considered eligible to apply to areas designated as Mental Health HPSAs or MUAs.~~]

[~~(4) The department will consider J-1 visa waivers for physicians who are non-primary care specialists when additional documentation is submitted supporting the need for the services of the specialist and the shortage of that specialty in the HPSA or MUA.~~]

(b) [~~(5)~~] Applications [~~The first 30 complete applications~~] that meet federal and state requirements will be considered for recommendation on a first-come-first-served basis. The submission of a complete waiver application to the department does not ensure that the department will recommend a waiver to the United States Department of State and the Bureau of Citizenship and Immigration Services.

(c) [~~(6)~~] The employer or the employer's representative must submit the J-1 waiver request application to the department.

§13.5. Contract.

(a) - (b) (No change.)

(c) The contract must contain the following information:

(1) list of benefits, insurance to be provided to the provider;

(2) field of practice of the provider;

(3) practice site name, address and telephone number of the health care facility where the provider will work;

(4) scheduled work hours [~~hours of work~~];

(5) amount of leave; and

(6) statements that amendments shall adhere to state and federal J-1 visa waiver requirements.

[~~(d) If applying under Education Code, §51.949, the applicant must demonstrate compliance with its provisions.~~]

§13.8. Other Federal or State Requirements.

All waiver request applications must meet federal laws 8 USC §1182 and §1184. [~~All waiver request applications for faculty physicians must meet applicable state laws (Texas Education Code, §51.949).~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501693
Cathy Campbell
Director, Legal Services
Department of State Health Services
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 458-7236

♦ ♦ ♦

CHAPTER 460. MISCELLANEOUS
SUBCHAPTER A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
DIVISION 1. TDMHMR RULEMAKING

25 TAC §§460.1 - 460.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§460.1 - 460.8, concerning rulemaking by the Texas Department of Mental Health and Mental Retardation.

BACKGROUND AND PURPOSE

The repeal is necessary to comply with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.18 and §1.26, which abolished the Texas Department of Mental Health and Mental Retardation, one of the department's legacy agencies, and transferred its rulemaking authority to the Executive Commissioner of the Health and Human Services Commission. Repeal of these sections is necessary to align the department's rules more accurately with House Bill 2292.

SECTION-BY-SECTION SUMMARY

The repeal of §§460.1 - 460.8 is necessary to align the department's rules with the requirements of House Bill 2292 concerning transfer of rulemaking authority to the Executive Commissioner of the Health and Human Services Commission.

FISCAL NOTE

Cathy B. Campbell, General Counsel, Office of General Counsel, has determined that for each year of the first five-year period that the repeal will be in effect, there will be no fiscal implications to state or local government as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Campbell has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Campbell has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is more accurate alignment of department rules with House Bill 2292.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Sara Richardson, Legal Assistant, Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, ext. 6961. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed repeal is authorized by House Bill 2292, which abolished the Texas Department of Mental Health and Mental Retardation and transferred its rulemaking authority to the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules reasonably necessary for the department to administer its regulatory and administrative functions.

The proposed repeal affects the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§460.1. Purpose.

§460.2. Definitions.

§460.3. Coordination of the Rulemaking Process.

§460.4. Petitions for Rules or Changes to Rules.

§460.5. Public Comment on Rules.

§460.6. Emergency Rulemaking.

§460.7. Distribution.

§460.8. References.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501662
Cathy Campbell
Director, Legal Services
Department of State Health Services
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 458-7236

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

34 TAC §73.43

The Employees Retirement System of Texas (ERS) proposes new rule 34 TAC §73.43, concerning the deduction from an ERS annuity for certain membership fees. This section is added to further comply with and conform to Senate Bill 292, 77th Legislature, Regular Session, as it relates to the addition of Texas Government Code §814.009.

New subsection (a) of §73.43 authorizes, in a manner specified by the System, a deduction by a person who receives an annuity from ERS.

New subsection (b) of §73.43 provides that certain state employee organizations must certify to ERS that they meet the requirements of a state employee organization as specified in Texas Government Code §814.009(a)(2).

New subsection (c) of §73.43 authorizes ERS to provide a state employee organization such identifying information as the System deems necessary to identify a person who has elected to participate in the deduction program.

New subsection (d) of §73.43 provides that a person who disputes any aspect of a membership fee deduction must seek resolution through the applicable state employee organization and that the system is not liable or responsible for any damages or consequences related to any dispute or deduction.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification on the new benefit of deducting certain membership fee(s) from an annuity. There are no known anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, June 6, 2005.

The new rule is proposed under Texas Government Code, §814.009(c), which provides authorization for the board of trustees to adopt rules governing the deduction from an ERS annuity and Texas Government Code §815.102(a)(2), which provides authorization for the board of trustees to adopt rules for the administration of the funds of the retirement system.

No other statutes are affected by this proposed new rule.

§73.43. Deduction from Annuity for Certain Membership Fees.

(a) A person who receives an annuity from the Employees Retirement System of Texas (System) may authorize, in the manner specified by the System, one or more deductions from the person's monthly annuity to pay membership fees in a state employee organization as provided by Texas Government Code §814.009.

(b) An organization that meets the certification requirement specified in Texas Government Code §814.009(a)(2) must certify to the System that the requirement has been met before participating in the membership fee deduction program and at such other times as may be determined by the System.

(c) The System may provide to a state employee organization such identifying information, as the System considers necessary, to properly identify a person who elects to participate in the membership fee deduction program.

(d) The System is not liable or responsible for any damages or consequences resulting from a person's authorization or cancellation of a deduction under this section. A person who disputes any aspect of an authorization or cancellation must seek resolution through the applicable state employee organization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501690
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: June 5, 2005
For further information, please call: (512) 867-7421

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.13

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Commission on Law Enforcement Officer Standards and Education has been automatically withdrawn. The amended section as proposed appeared in the October 15, 2004 issue of the *Texas Register* (29 TexReg 9631).

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501661

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION
SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

The Office of the Governor, Criminal Justice Division (CJD), adopts the amendment of Subchapter C §3.203 with changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1551). The acronym "JJDPA" in the proposed text of subsection (b) of this section was changed to "Juvenile Justice and Delinquency Prevention Act of 2002" to provide the full name of the federal act.

The Office of the Governor, Criminal Justice Division (CJD), adopts the amendment of Subchapter C §3.1205 without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1551).

The amendment to subsection (b) of §3.203 updates the language of this subsection to reflect the current federal legislation, rules and guidelines applicable to the Juvenile Justice and Delinquency Prevention Act Fund.

The amendment to subsection (a) of §3.1205 clarifies that applicants for state discretionary set-aside grants are eligible for funding only under the specific program purpose areas selected by the Governor's Juvenile Justice Advisory Board in accordance with the federal legislation, rules and guidelines applicable to the Juvenile Accountability Block Grant Program.

No comments were received regarding adoption of the amendments.

DIVISION 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUND

1 TAC §3.203

The amendment of this rule is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.203. Project Requirements.

(a) Projects must meet the requirements of §3.53 of this chapter.

(b) Grant funds can support projects to prevent juvenile delinquency including:

(1) Aftercare/Reentry. Programs to prepare targeted juvenile offenders to successfully return to their communities after serving a period of secure confinement in a training school, juvenile correctional facility, or other secure institution. Aftercare programs focus on preparing juvenile offenders for release and providing a continuum of supervision and services after release.

(2) Alternatives to Detention. Alternative services provided to a juvenile offender in the community as an alternative to confinement.

(3) Child Abuse and Neglect Programs. Programs that provide treatment to juvenile offenders who are victims of child abuse or neglect and to their families to reduce the likelihood that such juvenile offenders will commit subsequent violations of law.

(4) Children of Incarcerated Parents. Services designed to prevent delinquency or treat delinquent juveniles who are the children of incarcerated parents.

(5) Community Assessment Centers (CACs). Centers that lead to more integrated and effective cross-system services for juveniles and their families. CACs are designed to positively affect the lives of youth and divert them from a path of serious, violent, and chronic delinquency. Using a collaborative approach, CACs serve the community in a timely, cost-efficient, and comprehensive manner.

(6) Court Services. Programs designed to encourage courts to develop and implement a continuum of pre- and post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting. Services include expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, translation services and similar programs, and secure, community-based treatment facilities linked to other support services.

(7) Delinquency Prevention. Programs or other initiatives designed to reduce the incidence of delinquent acts and directed to the general youth population thought to be at risk of becoming delinquent. This category includes what is commonly referred to as "primary prevention" (e.g., parent education, peer counseling). This program area excludes programs targeted at youth already adjudicated delinquent and those programs designed specifically to prevent gang-related or substance abuse activities undertaken as part of program areas described in paragraphs (10) and (28) of this subsection.

(8) Disproportionate Minority Contact. Programs or other initiatives designed primarily to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system, pursuant to §223(a)(22) of the Juvenile Justice and Delinquency Prevention Act of 2002.

(9) Diversion. Programs to divert juveniles from entering the juvenile justice system.

(10) Gangs. Programs or other initiatives designed primarily to address issues related to juvenile gang activity. This program area includes prevention and intervention efforts directed at reducing gang-related activities.

(11) Gender-Specific Services. Services designed to address the needs of female offenders in the juvenile justice system.

(12) Graduated Sanctions. A system of sanctions that escalate in intensity with each subsequent, more serious delinquent offense.

(13) Gun Programs. Programs (excluding programs to purchase from juveniles) designed to reduce the unlawful acquisition and illegal use of guns by juveniles.

(14) Hate Crimes. Programs designed to prevent and reduce hate crimes committed by juveniles.

(15) Jail Removal. Programs or other initiatives designed to eliminate or prevent the placement of juveniles in adult jails and lockups, as defined in §223(a)(13) of the Juvenile Justice and Delinquency Prevention Act of 2002.

(16) Job Training. Programs to enhance the employability of juveniles or prepare them for future employment. Such programs may include job readiness training, apprenticeships, and job referrals.

(17) Juvenile Justice System Improvement. Programs or other initiatives designed to examine issues or improve practices, policies, or procedures on a system-wide basis (e.g., examining problems affecting decisions from arrest to disposition and detention to corrections).

(18) Mental Health Services. Services include, but are not limited to, the development and/or enhancement of diagnostic, treatment, and prevention instruments; psychological and psychiatric evaluations; counseling services; and/or family support services.

(19) Mentoring. Programs designed to develop and sustain a one-to-one supportive relationship between a responsible adult age 18 or older (mentor) and an at-risk juvenile (mentee) that takes place on a regular basis.

(20) American Indian Programs. Programs designed to address juvenile justice and delinquency prevention issues for American Indians and Alaska Natives.

(21) Probation. Programs to permit juvenile offenders to remain in their communities under conditions that the juvenile court prescribes.

(22) Restitution/Community Service. Programs to hold juveniles accountable for their offenses by requiring community service or repayment to the victim.

(23) Rural Area Juvenile Programs. Prevention, intervention, and treatment services in an area located outside a metropolitan statistical area as designated by the U.S. Bureau of the Census.

(24) School Programs. Education programs and/or related services designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(25) Separation of Juveniles From Adult Inmates. Programs that ensure that juveniles will not be detained or confined in any institutions where they may come into contact with adult inmates, pursuant to §223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 2002.

(26) Serious Crime. Programs or other initiatives designed to address serious and violent criminal-type behavior by youth. This program area includes intervention, treatment, and reintegration of serious and violent juvenile offenders.

(27) Sex Offender Programs. Programs to support the assessment, treatment, rehabilitation, supervision, and accountability of juvenile sex offenders.

(28) Substance Abuse. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs include control, prevention, and treatment.

(29) Youth Advocacy. Projects designed to develop and implement advocacy activities focused on improving services for and protecting the rights of youth affected by the juvenile justice system.

(30) Youth Courts. Youth courts (also known as teen courts) are juvenile justice programs in which peers play an active role in the disposition of the juvenile offender. Most youth courts are used as a sentencing option for first-time offenders charged with misdemeanor or nonviolent offenses who acknowledge their guilt. The youth court serves as an alternative to the traditional juvenile court.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2005.

TRD-200501650
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: May 10, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 463-1919

♦ ♦ ♦

DIVISION 12. JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM

1 TAC §3.1205

The amendment of this rule is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2005.

TRD-200501649

David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: May 10, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 463-1919

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 19. TEXAS MAIN STREET PROJECT

13 TAC §§19.1 - 19.8

The Texas Historical Commission (hereafter referred to as the Commission) adopts the repeal of §§19.1 - 19.8 of Chapter 19 (Title 13, Part 2 of the Texas Administrative Code), concerning the Texas Main Street Project, as published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1213).

The repeal of these sections are being adopted in an effort to update and modify existing rules associated with the Texas Main Street Project.

No public comments were received regarding the adoption of this repeal.

The repeal of these sections are adopted under Title 4, Chapter 442, §442.005(q) of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The repeal implements §442.014 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2005.

TRD-200501616
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: May 9, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 463-1858

♦ ♦ ♦

CHAPTER 19. TEXAS MAIN STREET PROGRAM

13 TAC §§19.1 - 19.5

The Texas Historical Commission (hereafter referred to as the Commission) adopts new §§19.1 - 19.5 of Chapter 19 (Title 13, Part 2 of the Texas Administrative Code), concerning the Texas Main Street Program. Sections 19.1, 19.2, 19.4, and 19.5 are adopted without changes to the proposed text as published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1213). Section 19.3 is adopted with changes to the proposed text as published. A typo was corrected in §19.3(4) relating to the population of urban Main Street cities. Instead of "greater than 50,000 people" it should read "50,001 people or greater."

The adoption of the new sections is an effort to thoroughly update and modify existing rules associated with the Texas Main Street Program. The existing rules have been in effect for many years with few revisions and have been augmented over the years as the program has developed. The existing rules contain information that is inaccurate and outdated and were not straightforward and easy to understand. It was apparent that the rules needed to be revisited and rewritten in a comprehensive way so that they better complied with the format of Texas Historical Commission rules. The adopted new rules address the manner in which the program operates in a clear and concise fashion. Section 19.1 provides that the purpose of the Main Street Program is to provide assistance to Texas Main Street cities. Section 19.2 provides that a system exists by which the Commission may designate and provide assistance to Texas Main Street cities. Section 19.3 provides for definitions used in the rules to explain the different types of programs within the Texas Main Street Program as well as other definitions relating to the program. Section 19.4 provides for the application process and review as well as selection of Texas Main Street cities. Section 19.5 provides for the assistance rendered to Texas Main Street cities and any fees that may be associated with this assistance.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under Title 4, Chapter 442, §442.005(q) of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The adopted new sections implement §442.014 of the Texas Government Code. No other statutes, articles, or codes are affected by the new sections.

§19.3. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context clearly indicates otherwise:

(1) Texas Main Street Program--A program of the Texas Historical Commission in which designated Texas Main Street cities receive assistance for their historic, commercial buildings.

(2) Texas Main Street City--Any city that has been officially designated by the Texas Historical Commission as a participant in the Texas Main Street Program.

(3) Texas Main Street Small City--Main Street city with population of 50,000 people or fewer.

(4) Texas Main Street Urban City--Main Street city with population of 50,001 people or greater.

(5) Texas Main Street Provisional City--A Main Street city of any size that is not accepted upon first application submittal may participate provisionally in the program, upon invitation, while application is resubmitted the following year.

(6) Texas Main Street Recertified City--A city that was formerly in the program that has reapplied and been accepted to be a Main Street City.

(7) Main Street Interagency Council--A council that evaluates and ranks Main Street applications and makes recommendations

to the Commission. The composition of the Main Street Interagency Council is determined by the Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2005.

TRD-200501615
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: May 9, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 463-1858

♦ ♦ ♦

CHAPTER 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

13 TAC §29.6

The Texas Historical Commission (hereafter referred to as the Commission) adopts amendments to §29.6 of Title 13, Part 2, Chapter 29 of the Texas Administrative Code, relating to the management and care of artifacts and collections, gathered under the jurisdiction of Texas Government Code, Chapter 442 and the Antiquities Code of Texas (Title 9, Chapter 191, of the Texas Natural Resources Code), without changes to the proposed text as published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1214).

The amendments are needed in a continuing effort by the Commission to assist and encourage curatorial facilities to upgrade their care of state associated collections that are gathered under the jurisdiction of the Antiquities Code of Texas.

The Commission received no comments concerning adoption the amendments.

The amendments are adopted under both Title 4, Chapter 442, §442.005(q) of the Texas Government Code and Title 9, Chapter 191, §191.052 of the Texas Natural Resources Code, which provides the Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2005.

TRD-200501613
F. Lawrence Oaks
Executive Director
Texas Historical Commission
Effective date: May 9, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 463-1858

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.15

The Texas Higher Education Coordinating Board adopts new §1.15 concerning the authority of the Commissioner of Higher Education to propose Board rules, without changes to the proposed text, as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 784). Specifically, this new section authorizes the Commissioner of Higher Education to propose and submit proposed rules to the *Texas Register* for publication prior to consideration by the Board of the adoption of those rules. Historically, the Board has considered both the proposal and adoption of rules.

No comments were received regarding the new section.

The new section is adopted under the Texas Education Code, Section 61.027, which provides the Board with the authority to adopt and publish rules and regulations in accordance with and under the conditions applied to other agencies by Texas Government Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501663
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 12, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.25

The Texas Higher Education Coordinating Board adopts amendments to §4.25, concerning degree program requirements for undergraduate students transferring from a Texas public institution of higher education to another public institution of higher education without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 785). Sometimes a degree program's requirements change. Courses may be added or deleted, based on changes in the field, market needs, or other reasons. Students who are enrolled in the program when changes are enacted are generally given a choice of graduation under the requirements that were in effect when

they first enrolled, or the revised requirements. Transfer students who follow published degree requirements should be afforded the same options for graduation as students native to the institution. Specifically, this amendment would require that institutions treat transfer students the same way they treat their own non-transfer students regarding graduation requirements under a particular catalog. Institutions would be required to include information about their policies regarding graduation under the degree requirements of a particular catalog in their official publications, including print and electronic catalogs. The adopted amendments would make §4.25 of Board rules consistent with the definitions in §4.23.

The following comments were received regarding the amendments:

Comments: The University of Texas Medical Branch at Galveston commented that these amendments were acceptable.

Response: As a result of this comment, no changes were made to the proposed amendments.

These amendments are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; and §61.051, which provides the Coordinating Board with authority to develop and implement policies to provide for the free transferability of lower division course credit among institutions of higher education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501667
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 12, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.6

The Texas Higher Education Coordinating Board adopts an amendment to §5.6 concerning distribution of operating costs of the Common Admission Application, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 787). Specifically, the amendments would allow a different fee structure to be used in assessing the annual cost of using the Texas Common Application by a Texas community college.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §51.762, which states that the Coordinating Board, with the assistance of an advisory committee composed of representatives of general academic teaching institutions and in consultation with affected general academic teaching institutions, shall adopt by rule a common admission application form for use by a person seeking admission as a freshman student to a general academic teaching institution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501685
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 15, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §5.23, §5.24

The Texas Higher Education Coordinating Board adopts amendments to §5.23 and §5.24, concerning planning authority for degree without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 788).

Specifically, these amendments change the term planning authority to preliminary authority, require an institution requesting a new doctoral program to have prior preliminary authority for the program, and allow institutions to ask for a change in its table of programs for additional preliminary authority requests more often than every four years.

The following comments were received regarding the amendments:

Comments: The University of Texas Medical Branch at Galveston commented that these amendments were acceptable.

Response: As a result of this comment, no changes were made to the proposed amendments.

The amendments are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; and §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501668

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 12, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS

19 TAC §5.44, §5.50

Texas Higher Education Coordinating Board adopts amendments to §5.44 and §5.50, concerning planning authority for degree programs and the delegation of authority for approval of new degree programs at public universities and health-related institutions. Section 5.50 is adopted with changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 788). Section 5.44 is adopted without changes and will not be republished.

The amendments to §5.44 change the term planning authority to preliminary authority. The amendments to §5.50 permit the Commissioner to delegate to the Assistant Commissioner for Academic Affairs and Research the approval of all new degree programs at public universities and health-related institutions.

The following comments were received regarding the amendments:

Comments: The University of Texas Medical Branch at Galveston found these amendments acceptable.

Response: As a result of this comment, no changes were made to the proposed amendments.

The amendments are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; and §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education.

§5.50. Approvals by the Commissioner.

(a) The Commissioner may approve proposals from the public universities and health-related institutions for new baccalaureate or master's degree programs and academic administrative change requests, and, in very limited circumstances, new doctoral programs, on behalf of the Board in accordance with the procedures and criteria specified in this section.

(b) To be approved by the Commissioner, a proposal for a new degree program must include certification in writing from the Board of Regents of a proposing institution, in a form prescribed by the Commissioner, that the following criteria have been met:

(1) The proposed degree program is within the Table of Programs previously approved by the Board for the requesting institution.

(2) The curriculum, faculty, resources, support services, and other components of a proposed degree program are comparable to those of high quality programs in the same or similar disciplines offered by other institutions.

(3) Clinical or in-service placements, if applicable, have been identified in sufficient number and breadth to support the proposed program.

(4) The program is designed to be consistent with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools, and with the standards of other applicable accrediting agencies; and is in compliance with appropriate licensing authority requirements.

(5) The institution has provided credible evidence of long-term student interest and job-market needs for graduates; or, if proposed by a university, the program is appropriate for the development of a well-rounded array of basic baccalaureate degree programs at the institution where the principal faculty and other resources are already in place to support other approved programs and/or the general core curriculum requirements for all undergraduate students.

(6) The program would not be unnecessarily duplicative of existing programs at other institutions.

(7) Implementation and operation of the program would not be dependent on future Special Item funding.

(8) New costs to the institution over the first five years after implementation of the program would not exceed $2,000,000.

(c) In addition to the requirements listed in subsection (a) and (b) of this section, a new doctoral program may only be approved by the Commissioner if:

(1) the institution already offers a doctoral program or programs in a closely related disciplinary area,

(2) those existing doctoral programs are productive and offered at a high level of quality,

(3) the core faculty for the proposed program are already active and productive faculty in an existing doctoral program at the institution,

(4) no other university or health-related institution objects to the program during the 30-day comment period during which the request is posted on the web, and

(5) there is a very strong link between the program and workforce needs or the economic development of the state.

(d) A proposal for a new degree program or administrative change must include a statement from the institution's chief executive officer certifying adequate financing and explaining the sources of funding to support the first five years of operation of the program or administrative change.

(e) If a proposal meets the criteria specified in this section, the Commissioner may either approve it or forward it to the Board for consideration at an appropriate quarterly meeting.

(f) If a proposal does not meet the criteria specified in this section, the Commissioner may deny approval or forward it to the Board for consideration at an appropriate quarterly meeting. Institutions may appeal the decision to deny approval to the Board.

(g) If a proposed program is the subject of an unresolved grievance or dispute between institutions, the Commissioner must forward it to the Board for consideration at an appropriate quarterly meeting.

(h) At the beginning of each month, the Commissioner shall make available to the public universities, health-related institutions, community/technical colleges, and Independent Colleges of Texas, Inc. a list of all pending proposals for new degree programs and administrative changes. If an institution wishes to provide the Commissioner information supporting a concern it has about the approval of a pending proposal for a new degree program at another institution, it must do so within one month of the initial listing of the proposal, and it must also forward the information to the proposing institution.

(i) The authority given to the Commissioner to approve proposals from public universities and health-related institutions for new degree programs (and other related duties given under this section) may be delegated by the Commissioner to the Assistant Commissioner for Academic Affairs and Research.

(j) Each quarter, the Commissioner shall send a list of his approvals and disapprovals under this section to Board members. A list of the approvals and disapprovals shall also be attached to the minutes of the next quarterly Board meeting.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501669
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 12, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.7, §7.9

The Texas Higher Education Coordinating Board adopts amendments to §7.7 and §7.9, concerning standards for certificates of authority and standards for off-campus operations at exempt institutions without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 789).

Specifically, the standards of the Board in §7.7, which set out the standards for unaccredited institutions seeking certificates of authority to grant degrees, and in §7.9, which set out the standards for accredited out-of-state institutions seeking authority to operate off-campus locations in Texas, are being modified to make certain requirements of the Board more explicit and to change certain requirements to be more consistent with standard educational practice in the United States.

The following comments were received regarding the new sections:

Comments: The University of Texas Medical Branch at Galveston commented that these amendments were acceptable.

Response: As a result of this comment, no changes were made to the proposed amendments.

Comments: One commenter requested that the Board add the word "secular" to various parts of Standard 9 (Faculty Qualifications) and Standard 12 (Curriculum).

Response: The staff believes the suggested change is not only unnecessary, but would confuse the public by implying that institutions could offer degrees, which is always a secular function, if they claim that the degrees being offered are religious in nature. The commenter argues that the term "secular" should be inserted because the statute is unconstitutional; a claim that has been rejected by state district court, federal district court, and the state court of appeals. Finally, the question of the constitutionality of the statute is currently being considered by the Texas Supreme Court and it would be premature to enact any change of this nature until after they issue an opinion on this matter. As a result of this comment, no changes were made to the proposed amendments.

The amendments are adopted under the Texas Education Code, §61.027, which provides the Board with general rule-making authority; Texas Education Code, §61.002, which establishes the Board as an agency charged to provide leadership and coordination for the Texas higher education system; Texas Education Code, §§61.301 - 61.319, concerning regulation of private postsecondary education institutions; §61.311, which provides the Board with the authority to promulgate rules governing certificates of authority; Texas Education Code, §§61.401 - 61.405, regarding regulation of public institutions of higher education established outside the boundaries of the State of Texas; and Texas Education Code, §61.403 which provides the Board with the authority to promulgate rules regarding out of state public institutions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501671
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 12, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES
SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §9.93, §9.96

The Texas Higher Education Coordinating Board adopts amendments to §9.93 and §9.96, concerning approval of certificate programs and applied associate degree programs without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 795).

Specifically, the amendments permit the Commissioner to delegate to the Assistant Commissioner for Academic Affairs and Research the approval of all certificate programs and applied associate degree programs that comply with Board policies as

outlined in the Guidelines for Instruction Programs in Workforce Education.

The following comments were received regarding the amendments:

Comments: The University of Texas Medical Branch at Galveston found these amendments acceptable.

Response: As a result of this comment, no changes were made to the proposed amendments.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; and §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501670
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 12, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 12. CAREER SCHOOLS AND COLLEGES
SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §12.21

The Texas Higher Education Coordinating Board adopts amendments to §12.21, concerning the procedures for career schools and colleges to seek authority to offer academic degrees with changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 796).

Specifically, §§12.1 - 12.46 set forth provisions allowing institutions holding from the Texas Workforce Commission a certificate of authority to operate a career school or college to gain permission from the Coordinating Board to offer applied associate degrees. The amendment to §12.21 would make more explicit the point that institutions have the option to obtain approval to offer academic degrees in Texas under the existing provisions in §§7.1 - 7.17. This change would add a reference to the procedures for seeking degree granting authority into the section heading to draw attention to the procedures and to clarify that career schools and colleges are specifically included in the group of institutions eligible to apply for authority to offer academic degrees under the procedures in §§7.1 - 7.17. Since 1976, institutions of all types, including career schools and colleges, have been eligible to apply for authority from the Board to offer academic degrees. Board rules in §§7.1 - 7.17 (implementing the Texas Education Code, Chapter 61, Subchapter G) require an institution to meet the standards of the Board and then seek accreditation from an accrediting agency recognized by the Board. The institution must gain accreditation within eight years of receiving its first certificate of authority. The institution becomes exempt from Board oversight when it becomes accredited by a recognized accrediting agency.

The following comments were received regarding the amendments:

Comments: The University of Texas Medical Branch at Galveston commented that these amendments were acceptable.

Response: As a result of this comment, no changes were made to the proposed amendments.

The amendments are adopted under the Texas Education Code, §§61.301 - 61.319. Section 61.311 provides the Coordinating Board with general rule-making authority regarding the use of protected academic terms, offering of degrees and of courses said to be applicable to degrees, and institutional standards for issuance of a Certificate of Authority to grant degrees and to offer courses to be applicable toward a degree.

§12.21. Degree Titles Authorized Under This Chapter.

(a) Associate of Applied Science (AAS), Associate of Applied Arts (AAA), and Associate of Occupational Studies (AOS) degrees shall be the only associate degrees authorized under this chapter.

(b) A career school or college seeking authority to offer an academic associate, baccalaureate, or higher degree shall seek approval from the Board for a certificate of authority under the provisions outlined in Chapter 7 of this title (relating to Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2005.

TRD-200501672
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 12, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER G. RESEARCH DEVELOPMENT FUND

19 TAC §§13.120 - 13.130

The Texas Higher Education Coordinating Board adopts new §§13.120 - 13.130 concerning reporting restricted research expenditures for equitable distribution of the Research Development Fund with changes to §§13.122, 13.124, 13.125, and 13.127 as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 796). Specifically, §§13.120 - 13.122 are adopted concerning purpose, scope, authority, and definitions. Section 13.123 is adopted concerning the restricted research advisory committee. Sections 13.124 - 13.130 are adopted concerning the standards and accounting methods, report on restricted research projects and activities, the restricted research review panel, report of restricted research expenditures, report to the comptroller, reviews and appeals, and audits.

The following comments were received regarding the new sections:

Comment: Texas A&M University-Corpus Christi, West Texas A&M University, Texas State University at San Marcos, Texas Tech University, and the University of Houston suggested clarification of the language in §13.125(a) to include all restricted research projects in the awards report. Texas Tech University suggested that institutions without a current restricted research award greater than $250,000 in annual funding provide a negative report.

Response: The Coordinating Board staff agrees. As a result of this comment, new language requiring each eligible institution to report all of its restricted research awards was added to §13.125(a).

Comment: Texas A&M University-Corpus Christi, West Texas A&M University, and Texas State University at San Marcos suggested adding language to §13.125(h) to ensure that the institutions receive notice that reports are due.

Response: The Coordinating Board staff agrees that notice should be given to the institutions and will do so. It is not necessary, however, that the rules be amended. No changes were made as a result of this comment.

Comment: Texas A&M University-Corpus Christi noted that §13.127(f) no longer applies to the standards and accounting methods for determining restricted research expenditures and should be deleted.

Response: The Coordinating Board staff agrees. As a result of this comment, §13.127(f) was deleted.

Comment: West Texas A&M University and Texas A&M University-Corpus Christi suggested deleting §13.125(h) because it is repeated in §§13.127(g) and 13.128(b).

Response: The Coordinating Board staff disagrees. These sections deal with different reports. §13.125(h) precludes participation by institutions that do not submit awards lists for review, but §§13.125(g) and 13.128(b) deal with institutions that do not submit reports of restricted research expenditures that will be used to calculate distributions of the Research Development Fund. No changes were made as a result of this comment.

Comment: In responding to §§13.127(g) and 13.128(b), West Texas A&M University suggested that an institution that fails to file the required reports should not be eligible to receive money from the Research Development Fund, although there should be a provision for special circumstances (catastrophic computer failures, hurricanes, etc.).

Response: The Coordinating Board staff disagrees. To date, the Coordinating Board has not assessed penalties and has not recommended that these funds be withheld for institutions that file late reports. The proposed rules allow for a penalty and the withholding of funds until the report is received. The statutory reporting deadline is challenging because it falls before the institutions have completed their annual financial reports. If late reports become problematic, the Board may wish to revisit this issue at a future meeting. No changes were made as a result of this comment.

Comment: The University of Texas at El Paso suggested that the rules follow the language used to establish "primary purpose" according to the Standards and Accounting Methods for Determining Restricted Research Expenditures §13.124(a)(5).

Response: The Coordinating Board staff agrees. As a result of this comment, new language that enhances consistency and flexibility in establishing "primary purpose" was added to §13.124(a)(5).

Comment: The University of Houston noted §13.127(c) states that indirect costs should not be included in reports of restricted research expenditures, pointing out that this was reversed for the recent reporting requirement.

Response: The Coordinating Board staff disagrees. According to a memo from the Commissioner of Higher Education on October 1, 2001, only indirect costs on pass-through funds are disallowed. As a result, Coordinating Board staff directed participating institutions to include indirect costs in their restricted research expenditures reports for Fiscal Year 2004. In November 2004, the Restricted Research Advisory Committee directed Coordinating Board staff to treat indirect costs the same way the institutions' annual financial reports treat indirect costs. In those reports, indirect costs are not included in restricted research. Therefore, the proposed rules exclude indirect costs from restricted research expenditure reports. As result, indirect costs will not be included in future reports. No changes were made as a result of this comment.

Comment: The University of Texas at El Paso recommended deletion of §13.127(c) and (d) which disallow inclusion of indirect costs and "pass through to" expenditures, citing conformance with new national accounting standards.

Response: The Coordinating Board staff disagrees. Neither the new nor the previous accounting standards allowed indirect costs to be included in restricted research. "Pass through to" expenses are funds that are passed through an institution to another entity with little or no activity on the part of the passing institution and as such do not represent research activity by the passing institution. A member of the Restricted Research Advisory Committee conducted an in-depth study of "pass through to" funding and concluded that it was not wise to include these expenditures in determining restricted research. No changes were made as a result of this comment.

Comment: The University of Texas at El Paso recommended referencing an exception in the definition of sponsored instruction and training (§13.122(24)(D)).

Response: The Coordinating Board staff agrees. As a result of this comment, a reference to an allowance found in sponsored research and development §13.122(25) was added to §13.122(24)(D).

The new sections are adopted under Texas Education Code, §62.096 provides the Coordinating Board with the authority to verify restricted research expenditures reports to the Texas Comptroller of Public Accounts for equitable distribution of the Research Development Fund.

The new sections affect Texas Education Code, Chapter 62, Subchapter E, §§62.091 - 62.098.

§13.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Advanced Research Program/Advanced Technology Program (ARP/ATP)--research programs administered by the Board under Texas Education Code, Chapters 142 and 143.

(2) Advisory committee--The Board's Restricted Research Advisory Committee.

(3) Board or Coordinating Board--the Texas Higher Education Coordinating Board.

(4) Clinical Trial Agreement--an externally sponsored agreement for the administration of a specifically mandated patient protocol (sometimes in multiple clinical sites involving other institutions), in which some costs typically are paid from patient charges or other sources.

(5) Commissioner--Commissioner of Higher Education.

(6) Comptroller--the Texas Comptroller of Public Accounts.

(7) Demonstration Projects--projects in which the primary purpose is to apply previous Research and Development findings in new settings and to demonstrate their utility.

(8) Departmental Research--research, development, and scholarly activities that are not organized research and, consequently, are not separately budgeted by an institution.

(9) Development--the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(10) Eligible institution or institution--a general academic teaching institution, as defined by Texas Education Code, §61.003, other than The University of Texas at Austin, Texas A&M University, and Prairie View A&M University.

(11) Higher Education Assistance Fund (HEAF)--a fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(12) Indirect Costs--costs incurred for certain overhead related to administering a particular sponsored project, an instructional activity, or any other institutional activity. Indirect costs are synonymous with "facilities and administrative (F&A) costs."

(13) Industrial Collaboration Agreements--agreements with universities, colleges, centers, or institutes under which funds are provided for collaborative R&D activities. The activity must be sponsored by private philanthropic organizations and foundations, for-profit businesses, or individuals.

(14) Instruction--the teaching and training activities of an institution. This term includes all teaching and training activities, whether they are offered for credit toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division.

(15) Multiple Function Awards--awards that have multiple goals, such as research, instruction, and public service.

(16) Organized research--research and development activities of an institution that are separately budgeted by an institution.

(17) Other Sponsored Activities--programs and projects financed by Federal and non-Federal agencies and organizations that involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. Other Sponsored Activities may include travel grants, unless for research activities; support for conferences or seminars; support for university public events; provision of non-instructional and economic services beneficial to individuals and groups external to the university such as testing or diagnostic services, surveys, urban planning and mapping, etc.; publications by the university press; support for student participation in community service projects; support for projects pertaining to library collections, acquisitions, bibliographies or cataloging, unless primarily for documented research purposes, or programs to enhance institutional resources, including computer enhancements, unless primarily for documented research purposes.

(18) Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

(19) Pass-Throughs to Subrecipients--external award funds passed from one entity ("pass-through" entity) to another entity (subrecipient). The subrecipient administers the program, expending the award funds on behalf of or in connection with the pass-through entity.

(20) Research--a systematic study directed toward fuller scientific knowledge or understanding of the subject studied and the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities.

(21) Research and Development (R&D)--all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. R&D also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. Curriculum development projects may be considered as R&D when the primary purpose of the project is to develop and test an instructional or educational model through appropriate research methodologies, such as data collection, evaluation, dissemination, and publication.

(22) Research Development Fund--a fund established outside the state treasury to promote increased research capacity at eligible general academic teaching institutions under Texas Education Code, §§62.091 - 62.098.

(23) Restricted funds (restricted awards)--funds for which some external agency or organization has placed limitations on the uses for which the funds may be spent.

(24) Sponsored Instruction and Training--specific instructional or training activity established by grant, contract, or cooperative agreement with federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored Instruction includes:

(A) any project for which the primary purpose is to instruct any student at any location; recipients of this instruction may be university students or staff, teachers or students in elementary or secondary schools, or the general public, except for those activities defined in Paragraph (25) of this section;

(B) curriculum development projects at any level either to improve significantly or to add to an institution's general instructional offerings, and do not include R&D

(C) projects that involve university students in community service activities for which they are receiving academic credit;

(D) activities funded by awards to departments or schools for the support of students, except for those activities defined in paragraph (25), part E of this Section as Sponsored R&D

(E) dissertation work funded by grants, including grants for travel in relation to a dissertation, unless associated with a R&D activity as defined in paragraph (21) of this Section;

(F) outreach programs that bring local students on campus for classes; or

(G) general support for the writing of textbooks or reference books, video, or software to be used as instructional materials.

(25) Sponsored Research and Development (Sponsored R&D)--activity funded (sponsored) by grants, gifts, and/or contracts, including sponsored research contracts, that are designated by the sponsor as primarily for R&D purposes. The activity must be sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored R&D includes:

(A) awards to university faculty to support R&D activities;

(B) external faculty "career awards" to support the R&D efforts of the faculty;

(C) external funding to maintain facilities or equipment and/or operation of a center or facility that will be used for R&D

(D) external support for the writing of books, when the purpose of the writing is to publish R&D results;

(E) activities involving the training of individuals in R&D techniques (commonly called R&D training) where such activities utilize the same facilities as other R&D activities and where such activities are not included in the Instruction function;

(F) the research portion of expenditures in the federal work-study program, in accordance with instructions for preparing the annual financial report that is submitted by an institution to the Comptroller after each fiscal year ends; or

(G) clinical trial agreements in which data collection and analysis are the primary components of the institution's role in the trial, excluding costs that are covered by patient charges or similar sources.

(26) University Research and Development (University R&D)--activity that is supported by unrestricted university funds that the university has designated for use in R&D, such as unrestricted gifts, distributions from unrestricted endowments, interest income, technology licensing income, fees received from external entities for non-research services, proceeds from cost recovery enterprises, state appropriations not identified specifically by the legislature for R&D purposes, non-capitalized allocations from the PUF or HEAF for R&D purposes other than construction and remodeling, state appropriations made directly to the university for R&D through formula or special item funding including ARP/ATP, or cost-sharing expenditures by the university.

§13.124. Standards and Accounting Methods for Determining Restricted Research Expenditures.

(a) Only those expenditures from restricted awards made from the following types of projects and activities and sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals shall be classified as restricted research expenditures:

(1) Sponsored R&D, as defined in §13.122 of this title (relating to Definitions).

(2) Industrial Collaboration Agreements for R&D activities, as defined in §13.122 of this title (relating to Definitions) with universities, colleges, centers, or institutions.

(3) Demonstration Projects, as defined in §13.122 of this title (relating to Definitions), which have a significant new R&D component.

(4) Sponsored instruction and training, as defined in §13.122 of this title (relating to Definitions), for curriculum development projects when the primary purpose of the project is developing and testing an instructional or educational model through appropriate research methodologies that include data collection, evaluation, dissemination, and publication.

(5) Multiple Function Awards, as defined in §13.122 of this title (relating to Definitions), if the scope or activity of the restricted award includes R&D subject to the following limitation: if the purpose of a restricted award is primarily (more than 50 percent) research, then all expenditures made from that award qualify as restricted research expenditures. If the purpose of the restricted award is not primarily research (less than 50 percent), then none of the expenditures may be counted as restricted research. Primary purpose will normally be demonstrated by more than half of the funds having been budgeted for research, but may be demonstrated by the sponsor's statement of purpose or other documented evidence.

(b) Institutions shall document the process for determining restricted research awards and shall maintain documentation justifying the rationale used to classify the awards as restricted research.

§13.125. Report on Restricted Research Projects and Activities.

(a) Not later than June 30, each eligible institution shall provide to the Commissioner a verified report of all restricted research projects and activities for the current state fiscal year specifically identifying awards greater than $250,000 in annual funding.

(b) Classified military projects or any sponsored program deemed confidential or proprietary by funding entities shall not be included in the award lists.

(c) The report shall be in a format and with the specific content prescribed by the Commissioner.

(d) Only those projects or activities described in §13.124(a) of this title (relating to Standards and Accounting Methods for Determining Restricted Research Expenditures) shall be included in the report.

(e) All projects and activities reported by institutions shall be classified in accordance with these rules and, if the project or activity is pursuant to an award from the federal government, shall be classified by the federal government as R&D

(f) The report shall indicate the person or persons who determined that the projects or activities were restricted research projects or activities.

(g) The Commissioner shall provide the reports made under this section to each eligible institution.

(h) Institutions that fail to provide a report of restricted research projects and activities shall not be eligible for an allocation from the Research Development Fund and shall not be included in the Board's report to the Comptroller.

§13.127. Report of Restricted Research Expenditures.

(a) Not later than October 15, each eligible institution shall provide a verified, preliminary report of its restricted research expenditures to the Commissioner.

(b) The preliminary report shall contain only those restricted research expenditures from awards approved by the Commissioner under §13.126 of this title (relating to Restricted Research Review Panel).

(c) Expenditures for indirect costs of any restricted research award shall not be included in the report.

(d) Expenditures for pass-throughs to subrecipients shall not be included in the report.

(e) The institution shall maintain separate budgets and accounts for restricted research awards.

(f) If an eligible institution fails to report its restricted research expenditures, the Commissioner shall use data reported in previous years to estimate that institution's allocation from the Research Development Fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501689
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 15, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 427-6114

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §221.2, §221.7

The Board of Nurse Examiners (Board) adopts amendments without changes to 22 TAC §221.2 and §221.7, addressing Advanced Practice Nurses. The proposed amendments to the rule were published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 635). Section 301.152 of the Nursing Practice Act states that advanced practice nurses are granted authorization to practice and utilize titles based upon their educational preparation. Advanced practice nurses who are authorized by the board in either the nurse practitioner or clinical nurse specialist role are also recognized in a particular specialty area appropriate to their educational preparation and must limit their advanced nursing practice to the role and specialty for which they have been educated. For example, an advanced practice nurse who is educated and authorized to practice as a pediatric nurse practitioner is not authorized to provide advanced practice nursing care to adults.

At the July 2004 meeting, the Board voted to propose amendments to Rules 221.2 and 221.7, relating to advanced practice titles. The rule was published in the *Texas Register* on August 13, 2004. The board office received many written comments and also held a public hearing following this publication. During the public hearing, the Texas Nurses Association (TNA) requested a six month moratorium on action related to this rule amendment to allow time for the issue related to titles to be addressed at the national level because they believe this issue has implications for advanced practice beyond the State of Texas.

On December 16, 2004, the American Nurses Association hosted a meeting of national advanced practice registered nurse stakeholder organizations to discuss this issue at the request of TNA. Dr. Rounds and Ms. Thomas attended this meeting on behalf of the Board. The model for regulation of advanced practice nurses that appeared to have the greatest support from the profession was to license the advanced practice nurse in the broad roles as either a nurse-midwife, nurse anesthetist, nurse practitioner, or clinical nurse specialist without regard to specialty preparation. In order to do so, however, staff believes that regulation must be able to assure the public that individuals licensed with each of these titles are educated broadly across patient populations and practice settings rather than the current specialty and sub-specialty focused model for advanced educational preparation and subsequent examination. In addition to broad-based educational preparation, examination must also test for entry-level competence at the advanced practice level across that same broad base.

In order to progress from the current specialty and sub-specialty focused model for education and examination to the model that appeared to have the most support from the profession, there must be a step-wise approach. The Board currently recognizes 19 nurse practitioner and 22 clinical nurse specialist specialty and sub-specialty titles. It would be virtually impossible to proceed from this current model of regulation to that proposed by the profession in a relatively short period of time particularly when the Board continuously receives requests to recognize additional titles not currently recognized. The Advanced Practice Nursing Advisory Committee's recommendation for revisions to Rules 221.2 and 221.7 that were presented for the Board's consideration in July 2004 is a logical step from the current model to that discussed at the meeting hosted by ANA on December 16. The proposed amendments presume that less specialization and broader preparation are essential for licensure at the advanced practice level. Specialization and sub-specialization would then be considered value-added after legal recognition for authorization to practice at the advanced practice level is granted.

The Board reconsidered this issue at its January 2005 meeting. Because of requirements imposed by the Texas Register and because the proposed amendments were published in August 2004, it was not possible to grant TNA the six month moratorium for further discussion of this issue without taking action on the proposed amendments. A meeting, however, had been convened at the national level to discuss this issue as suggested by TNA. As a result, the Board voted to take action that allowed for the moratorium requested by TNA by withdrawing the amendments to the rules as proposed in July 2004, responding to the comments received, and re-proposing new amendments to Rules 221.2 and 221.7.

The new proposed language did not change the titles previously proposed for continued recognition. It did, however, contain other substantive changes as recommended by the comments received in response to the original proposed language, including a list of the titles that may be recognized via an exemption.

Two comments were received regarding the proposed rule: TNA (Jim Willman) and one individual. One individual supported the proposed changes, stating they would support moving toward a system of education and authorization/licensure that is consistent across educational programs and jurisdictions. The other

comment was submitted by James Willmann on behalf of TNA. Mr. Willmann's letter states that, although TNA would prefer the Board delay action until national consensus is reached, TNA does not oppose proceeding with adoption of the rule at this time. The comments and the Board's responses received are as follows:

Comment: One individual supports moving toward a system of education that allows for consistency across educational programs as well as authorization/licensure that is consistent across jurisdictions.

Response: The Board agrees that the revisions to Rules 221.2 and 221.7 are a step toward consistency in regulation. The Board currently recognizes a number of advanced practice titles for which individuals cannot obtain authorization to practice in most other jurisdictions.

Comment: The Texas Nurses Association (TNA) recommends rewriting proposed subsection 221.7(e)(1) such that the exemption to utilize certain titles is not discretionary with the board.

Response: The Board disagrees that the subsection should be rewritten. The issuance of any advanced practice authorization is discretionary in that the applicant must demonstrate compliance with all eligibility requirements. Amending the language as TNA suggests could subject the Board to challenge if an application from an individual requesting an exemption is denied or approval is delayed because it appears the individual does not meet other eligibility requirements.

Comment: TNA suggests that it may be beyond the authority of the BNE to limit an advanced practice nurse's practice to the State of Texas before Texas adopts a multi-state compact for advanced practice nurses. TNA also questions whether this language is applied only to advanced practice nurses recognized on the basis of an exemption.

Response: The Board disagrees that it does not have the authority to state that any advanced practice nurse's authorization to practice is limited to the State of Texas. For example, provisions for waiver of the master's requirement for certain certificate-prepared women's health nurse practitioners and nurse-midwives already exist in current Rule 221.7(d). These provisions have been in the rule since 2001, and there has been no discussion that such a limitation was beyond the Board's rule making authority since the adoption of that language. The language in the proposed rule is similar in format to the language that is in current Rule 221.7(d).

The adopted amendments are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the amendments will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501678

Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: May 15, 2005
Proposal publication date: February 11, 2005
For further information, please call: (512) 305-6823

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §§3.3303 - 3.3309, 3.3312, 3.3320, 3.3322, 3.3324, 3.3325

The Commissioner of Insurance adopts amendments to §§3.3303 - 3.3309, 3.3312, 3.3320, 3.3322, 3.3324, and 3.3325 concerning minimum standards for Medicare supplement policies. Sections 3.3305, 3.3306, 3.3308, 3.3312 and 3.3322 are adopted with changes to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10873). Sections 3.3303, 3.3304, 3.3307, 3.3309, 3.3320, 3.3324, and 3.3325 are adopted without changes.

These amendments are necessary to implement provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), as well as to make under age 65 persons losing eligibility for health benefits under Medicaid eligible for guaranteed issuance of Medicare supplement Plan A. After December 31, 2005, the MMA prohibits issuers of Medicare supplement policies from renewing outpatient prescription drug benefits for both prestandardized and standardized Medicare supplement policyholders who enroll in Medicare Part D.

Section 3.3303 revises definitions to conform to the MMA, as does §3.3304. Section 3.3305 alters requirements for issuance and renewability of plans including an outpatient prescription drug benefit to conform to the MMA. Section 3.3306 revises minimum benefit standards to conform to the MMA and the phase-out of the existing forms of outpatient prescription drug benefits; revises payment standards for Medicare Part A expenses; and defines the benefits included in new Plans K and L. Section 3.3307 amends loss ratio standards for HMOs to conform to the MMA. Section 3.3308 requires issuers to comply with notice requirements of the MMA. Section 3.3309 revises standards for applications in accordance with the MMA. Section 3.3312 changes standards for guaranteed issuance to conform to the MMA and makes under age 65 individuals losing eligibility for health benefits under Medicaid eligible for guaranteed issuance of Medicare supplement Plan A. Section 3.3320 prohibits issuing Medicare supplement coverage to an individual enrolled in Medicare Part C unless the effective date is after the termination of the Part C coverage. Section 3.3322 makes changes to filing requirements to conform to the MMA. Section 3.3324 adds §3.3312 to the list of exceptions to an issuer's authority to apply a preexisting condition provision. Section 3.3325 addresses the effect of out-of-network expenses

on out-of-pocket annual limits in Plans K and L and makes other changes to conform to the MMA. The department added language to §3.3312, in response to comments, to clarify which products are guaranteed issue for eligible persons under 65 years of age losing eligibility for Medicaid. In §§3.3305, 3.3306, 3.3308 and 3.3322 the department has made minor changes to correct form, typographical errors and update and correct citations.

General: Commenters have made several suggestions regarding the effective date of the rules and their effect on a carrier's ability to offer and issue certain plans. Some commenters requested that the department revise the rules to permit insurers to continue to use currently approved forms as appropriate through December 31, 2005. Another commenter requested that the rules specify that insurers may begin to offer plans with the newly adopted changes prior to January 1, 2006, subject to approval by the Commissioner of Insurance.

Agency Response: While the department declines to revise the proposal in the manner requested by commenters, the department does confirm that insurers can continue to use currently approved plans as appropriate, reminding carriers of their obligation to offer the standard plans which include prescription drugs until the advent of Medicare Part D prescription drug coverage. The department also confirms that, once the adopted rules take effect and prior to January 1, 2006, insurers may offer approved plans as authorized by these rules.

§3.3312(b)(8): Some commenters expressed concern that the proposed amendment providing guaranteed issue rights to Medicare recipients losing Medicaid eligibility would allow the newly-eligible individuals access to Plans A, B, C, and F.

Agency Response: Texas law guarantees to Medicare recipients under the age of 65 access only to Plan A. Staff has had several discussions with the commenters, as well as with the National Association of Insurance Commissioners (NAIC), the Center for Medicare and Medicaid Services, and the Texas Health and Human Services Commission staff regarding this issue. The department has added language to §3.3312(c) to clarify that an under 65 Medicare recipient losing coverage under Medicaid would be entitled only to guaranteed issuance of Plan A.

For, with changes: America's Health Insurance Plans, Texas Association of Life and Health Insurers, and UnitedHealth Group. Against: None.

The amendments are adopted under the Insurance Code §1652.051 (formerly Article 3.74, §2(f)) and §1652.005 (formerly Article 3.74, §10), and §36.001. Section 1652.051 provides that the department's rules must include requirements that are at least equal to those required by federal law, rules, and standards, including 42 U.S.C. §1395ss. Section 1652.005 provides that the department shall adopt rules in accordance with federal law applicable to the regulation of Medicare supplement insurance coverage that are necessary for the state to obtain or retain certification as a state with an approved regulatory program under 42 U.S.C. §1395ss, as well as any other reasonable rules that are necessary and proper to carry out this article. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§3.3305. Policy Provisions.

(a) Except for permitted pre-existing condition clauses described in §3.3306(1)(A) of this title (relating to Minimum Benefit Standards), no policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(b) No Medicare supplement policy or certificate may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(c) No Medicare supplement policy, contract, or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.

(d) Subject to §3.3306(1)(D) and (E) of this title, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(e) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(f) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(1) the policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

(2) premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

§3.3306. Minimum Benefit Standards.

No insurance policy, subscriber contract, certificate, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, certificate, or evidence of coverage meets the applicable standards in paragraphs (1) - (3) of this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this subchapter, the Insurance Code, Article 3.74, and any other applicable law.

(A) A Medicare supplement policy shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because they involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(i) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting condition waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

(ii) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy or certificate shall not provide any time period applicable to preexisting conditions,

waiting periods, elimination periods and probationary periods for benefits.

(iii) If a Medicare supplement policy or certificate is issued to an applicant who qualifies under §3.3312(b) of this title (relating to Guaranteed Issue for Eligible Persons) or §3.3324(a) of this title (relating to Open Enrollment), the issuer shall reduce the period of any preexisting condition exclusion as required by §3.3312(a)(2) of this title and §3.3324(c) and (d) of this title.

(B) A Medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(C) A Medicare supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(D) No Medicare supplement policy shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium, or be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(E) Each Medicare supplement policy shall be guaranteed renewable and shall comply with the provisions of clauses (i) - (v) of this subparagraph.

(i) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(ii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided in clause (iv) of this subparagraph, the issuer shall offer certificate holders Medicare supplement coverage which provides benefits as set out in subclause (I) or (II) of this clause, as follow:

(I) an individual Medicare supplement policy which (at the option of the certificate holder):

(-a-) provides for continuation of the benefits contained in the group policy; or

(-b-) provides for benefits that otherwise meet the requirement of this paragraph; or

(II) continuation of benefits under the group plan until there are no longer any certificate holders remaining who have opted for continuation of benefits under the group policy terminated by the policyholder.

(iii) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(I) offer the certificate holder conversion opportunity described in clause (ii) of this subparagraph; or

(II) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(iv) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion of preexisting conditions that would have been covered under the group policy being replaced.

(v) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the MMA, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(F) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(G) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed 24 months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.

(i) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(ii) Each Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder or certificate holder if the policyholder or certificate holder is entitled to benefits under section 226(b) of the Social Security Act and is covered under a group health plan (as defined in section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy or certificate shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder or certificate holder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) Reinstitution of such coverages shall provide for the following:

(I) waiver of any waiting period with respect to treatment of preexisting conditions;

(II) resumption of coverage which is substantially equivalent to coverage in effect before the date of such suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of the suspension; and

(III) classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(H) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by

the MMA, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(2) Standards for the basic (core) benefits common to benefit plans A - J. Every issuer shall make available a policy or certificate including only the basic "core" package of benefits described in subparagraphs (A) - (E) of this paragraph to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. The basic core benefits shall consist of the following:

(A) coverage for Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(B) coverage for Part A Medicare eligible expenses, to the extent not covered by Medicare, incurred as daily hospital charges during use of Medicare lifetime hospital inpatient reserve days;

(C) upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulation) unless replaced in accordance with federal regulation; and

(E) coverage for the coinsurance amount (or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount) of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for Additional Benefits. The additional benefits as uniformly defined in subparagraphs (A) - (K) of this paragraph shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided in paragraph (5)(A) - (I) of this section.

(A) Medicare Part A Deductible--Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(B) Skilled Nursing Facility Care--Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(C) Medicare Part B Deductible--Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(D) Eighty Percent of the Medicare Part B Excess Charges--Coverage for 80% of the difference between the actual Medicare Part B charge as billed and the Medicare-approved Part B charge, not to exceed any charge limitation established by the Medicare program or state law.

(E) One Hundred Percent of the Medicare Part B Excess Charges--Coverage for all of the difference between the actual Medicare Part B charge as billed and the Medicare-approved Part B charge, not to exceed any charge limitation established by the Medicare program or state law.

(F) Basic Outpatient Prescription Drug Benefit--Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(G) Extended Outpatient Prescription Drug Benefit--Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(H) Medically Necessary Emergency Care in a Foreign Country--Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(I) Preventive Medical Care Benefit or Services--Coverage for the preventive health services described in clauses (i) and (ii) of this subparagraph. Coverage for preventive medical care benefits or services shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare:

(i) an annual clinical preventive medical history and physical examination that may include tests and services from clause (ii) of this subparagraph and patient education to address preventive health care measures;

(ii) preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

(J) At-Home Recovery Benefit--Coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(i) For purposes of this benefit, the following definitions in subclauses (I) - (IV) of this clause shall apply.

(I) Activities of daily living include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(II) Care provider means a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(III) Home shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(IV) At-home recovery visit means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(ii) Coverage requirements and limitations.

(I) At-home recovery services provided must be primarily services which assist in activities of daily living.

(II) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(III) Coverage is limited to:

(-a-) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(-b-) the actual charges for each visit up to maximum coverage of $40 per visit;

(-c-) $1,600 per calendar year;

(-d-) seven visits in any one week;

(-e-) care furnished on a visiting basis in the insured's home;

(-f-) services provided by a care provider as defined in this section;

(-g-) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(-h-) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(iii) Coverage is excluded for:

(I) home care visits paid for by Medicare or other government programs; and

(II) care provided by family members, unpaid volunteers, or providers who are not care providers.

(K) New or Innovative Benefits--Any benefit which an issuer may, with the prior approval of the commissioner, offer in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

(4) Requirement of uniformity for all Medicare supplement benefit plans. An issuer shall make available only those groups, packages or combinations of Medicare supplement benefits as described in this section, unless otherwise permitted by provisions of paragraph (3)(K) of this section and in §3.3325 of this title (relating to Medicare Select Policies, Certificates and Plans of Operation). Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plan "A," defined as the basic core plan of benefits in paragraph (2) of this section and described in paragraph (5)(A) of this section, and benefit plans "B" through "J," described in paragraph (5)(B) - (L) of this section. All benefit plans shall conform to the definitions set out in §3.3303 of this title (relating to Definitions) and §3.3304 of this title (relating to Policy Definitions and Terms). Each benefit shall be structured in accordance with the format provided in paragraphs (2) and (3) of this section. Each benefit plan shall list the benefits in the order shown in paragraph (5)(A) - (L) of this section. For purposes of this paragraph, "structure, language, and format" means style, arrangement and overall content of a benefit. In addition to the benefit plan designations required in this paragraph, an issuer may use other designations to the extent permitted by law.

(5) Make-up of Benefit Plans. Subparagraphs (A) - (N) of this paragraph set out the composition of benefit plans. Each benefit plan shall meet the requirements of this subchapter.

(A) Standardized Medicare Supplement Benefit Plan "A." Medicare supplement benefit Plan "A" shall include only the Core Benefits common to All Benefit Plans, as defined in paragraph (2) of this section.

(B) Standardized Medicare Supplement Benefit Plan "B." Medicare supplement benefit Plan "B" shall include only the Core Benefits as defined in paragraph (2) of this section, plus the Medicare Part A Deductible as defined in paragraph (3) of this section.

(C) Standardized Medicare Supplement Benefit Plan "C." Medicare supplement benefit Plan "C" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in paragraph (3) of this section.

(D) Standardized Medicare Supplement Benefit Plan "D." Medicare supplement benefit Plan "D" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At-Home Recovery Benefit as defined in paragraph (3) of this section.

(E) Standardized Medicare Supplement Benefit Plan "E." Medicare supplement benefit Plan "E" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in paragraph (3) of this section.

(F) Standardized Medicare Supplement Benefit Plan "F." Medicare supplement benefit Plan "F" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, the Skilled Nursing Facility Care, the Part B Deductible, One Hundred Percent of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in paragraph (3) of this section.

(G) Standardized Medicare Supplement Benefit High Deductible Plan "F." Medicare supplement benefit high deductible Plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses include the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100% of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in paragraph (3) of this section. The annual high deductible Plan "F" deductible shall consist of out-of-pocket expenses, other than premiums for services covered by the Medicare supplement Plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(H) Standardized Medicare Supplement Benefit Plan "G." Medicare supplement benefit Plan "G" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Eighty Percent of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit as defined in paragraph (3) of this section.

(I) Standardized Medicare Supplement Benefit Plan "H." Medicare supplement benefit Plan "H" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in paragraph (3) of this section. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(J) Standardized Medicare Supplement Benefit Plan "I." Medicare supplement benefit Plan "I" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, One Hundred Percent of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit as defined in paragraph (3) of this section. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(K) Standardized Medicare Supplement Benefit Plan "J." Medicare supplement benefit Plan "J" shall include only the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, One Hundred Percent of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in paragraph (3) of this section. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(L) Standardized Medicare Supplement Benefit High Deductible Plan "J." Medicare supplement benefit high deductible Plan "J" shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses include the Core Benefit as defined in paragraph (2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100% of the Medicare Part B Excess Charges, Extended Outpatient Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in paragraph (3) of this section. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums for services covered by the Medicare supplement Plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "J" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(M) Standardized Medicare supplement benefit Plan "K" shall include only the following:

(i) Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(ii) Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(iii) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(iv) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(v) Skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vi) Hospice Care: Coverage for 50% of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vii) Coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(viii) Except for coverage provided in clause (ix) of this subparagraph, coverage for 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(ix) Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(x) Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in calendar year 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary.

(N) Standardized Medicare supplement benefit Plan "L" shall include only the following:

(i) The benefits described in subparagraph (M)(i), (ii), (iii) and (ix) of this paragraph;

(ii) The benefits described in subparagraph (M)(iv), (v), (vi), (vii) and (viii) of this paragraph, but substituting 75% for 50%; and

(iii) The benefit described in subparagraph (M)(x) of this paragraph, but substituting $2000 for $4000.

§3.3308. Required Disclosure Provisions.

(a) General rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision must be consistent with the type of contract issued. The provisions shall be appropriately captioned, and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the age of the policyholder.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the policyholder, or by which the issuer exercises a specifically reserved right under a Medicare supplement policy, or by which the issuer is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder. After the date of issue of the policy or certificate, any rider or endorsement which increases benefits or coverage with concomitant increase in premium during the policy term shall be agreed to in writing signed by the policyholder, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or unless the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the additional premium charge shall be set forth in the policy.

(3) Medicare supplement policies shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions:

(A) the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations;"

(B) the policy or certificate shall define the term "preexisting condition" and shall provide an explanation of the term in its accompanying outline of coverage; and

(C) the policy or certificate shall include a provision explaining the reduction of the preexisting condition limitation for individuals that qualify under §3.3306(1)(A) of this title (relating to Minimum Benefit Standards), §3.3312(a)(2) of this title (relating to Guaranteed Issue to Eligible Persons), or §3.3324(c) and (d) of this title (relating to Open Enrollment).

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(6) Issuers of accident and sickness policies, certificates, or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, to a person(s) eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services in no smaller than 12-point type.

(A) For purposes of this section, "form" means the language, format, style, type size, type proportional spacing, bold character, and line spacing.

(B) If a Guide incorporating the latest statutory changes is not available from a government agency, companies may comply with this provision by modifying the latest available Guide to the extent required by applicable law.

(C) Except as provided in this section, delivery of the Guide shall be made whether or not such policies, certificates, subscriber contracts, or evidences of coverage are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this regulation.

(D) Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Provided, however, issuers shall deliver the Guide to the applicant for a direct response Medicare supplement policy upon request, but not later than at the time the policy is delivered.

(7) Except as otherwise provided in this section, the terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import may not be used unless the policy is issued in compliance with §3.3306 of this title.

(b) Outline of coverage requirements for Medicare supplement policies.

(1) Issuers of Medicare supplement coverage in this state shall provide an outline of coverage to all applicants, including certificate holders under group policies, at the time application is presented to the prospective applicant, and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant.

(2) If a Medicare supplement policy or certificate is issued on a basis which would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued shall accompany such policy or certificate when it is delivered and contain the following statement in no less than 12-point type, immediately above the company name: "Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(c) Form for outline of coverage. In providing outlines of coverage to applicants pursuant to the requirements of subsection (b)(1) of this section, insurers shall use a form which complies with the requirements of this subsection. The outline of coverage must contain each of the following four parts in the following order: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in paragraphs (1) and (2) of this subsection in no less than 12-point type.

(1) All plans A - J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(2) The items in subparagraphs (A) - (C) of this paragraph shall be included in the outline of coverage in addition to the items specified in the plan-specific outline-of-coverage forms.

(A) Dollar amounts which are shown in parentheses for each of the plan-specific charts on the following pages are for calendar year 1992. Issuers shall, for each plan offered, appropriately complete outline-of-coverage-chart statements about amounts to be paid by

Medicare, the plan, and the covered person by replacing the amount in parentheses with the dollar amount corresponding to each covered service for the applicable calendar year benefit period.

(B) The outline of coverage must include an explanation of any limitations and exclusions. Those limitations and exclusions resulting from Medicare program provisions may be disclosed as such by reference and need not be explained in their entirety. All limitations and exclusions related to preexisting conditions, and all other limitations and exclusions not resulting from Medicare regulations must be fully explained in the outline of coverage.

(C) The outline of coverage must include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or the surrender of the policy or certificate. If the policy contains such provisions, a description of them must be included.

(D) The outline of coverage for Medicare Select policies or certificates shall include information regarding grievance procedures which meet the requirements of §3.3325(m) of this title (relating to Medicare Select Policies, Certificates and Plans of Operation).
Figure: 28 TAC §3.3308(c)(2)(D)

(d) Notice requirements.

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every issuer providing Medicare supplement coverage to a resident of this state shall notify its policyholders, contract holders, and certificate holders of modifications it has made to Medicare supplement insurance policies, contracts, or certificates. The notice shall:

(A) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy, contract, or certificate; and

(B) inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notice shall not contain or be accompanied by any solicitation.

(4) Issuers shall comply with any notice requirements of the MMA.

§3.3312. Guaranteed Issue for Eligible Persons.

(a) Guaranteed issue.

(1) Eligible persons are those individuals described in subsection (b) of this section who seek to enroll under the Medicare supplement policy during the period specified in subsection (d) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) of this section that is offered and is available for issuance to newly enrolled individuals by the issuer, and shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(b) Eligible Persons. An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to the following that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(A) The certification of the organization or plan has been terminated; or

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under U.S.C. Title 42, Chapter 7, Subchapter XVIII, Part D in relation to the individual, including the failure to provide an individual on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets such other exceptional conditions as the Secretary may provide.

(3) The individual is enrolled with an entity listed in subparagraphs (A) - (D) of this paragraph and enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) of this subsection:

(A) An eligible organization under a contract under section 1876 of the Social Security Act (Medicare cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) An organization under an agreement under section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(D) An organization under a Medicare Select policy; and

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or of other involuntary termination of coverage or enrollment under the policy;

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under section 1894 of the Social Security Act, or a Medicare Select policy; and the subsequent enrollment is terminated by the individual during any period within the first 12 months of such subsequent enrollment (during which the individual is permitted to terminate such subsequent enrollment under section 1851(e) of the Social Security Act); or

(6) The individual, upon first becoming enrolled in Medicare part B for benefits at age 65 or older, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under section 1894 of the Social Security Act, and disenrolls from the plan or program no later than 12 months after the effective date of enrollment.

(7) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (c)(4) of this section.

(8) The individual loses eligibility for health benefits under Title XIX of the Social Security Act (Medicaid).

(c) Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsection (b)(1), (2), (3), (4), and (8) of this section is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L offered by any issuer, except that for persons under 65 years of age, it is a policy which has a benefit package classified as Plan A.

(2) Subsection (b)(5) of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in paragraph (1) of this subsection. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, the Medicare supplement policy described in this paragraph is the policy available from the same issuer but modified to remove outpatient prescription drug coverage, or at the election of the policyholder, a policy described in paragraph (1) of this subsection.

(3) Subsection (b)(6) of this section shall include any Medicare supplement policy offered by any issuer.

(4) Subsection (b)(7) of this section is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(d) Guaranteed Issue Time Period(s).

(1) In the case of an individual described in subsection (b)(1) of this section:

(A) for a plan that supplements the benefits under Medicare, the guaranteed issue period begins on the later of:

(i) the date the individual receives a notice of termination or cessation of all supplemental health benefits (or if a notice is not received, the date the individual receives notice that a claim has been denied because of such termination or cessation); or

(ii) the date the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter; or

(B) for a plan that is primary to the benefits under Medicare, the guaranteed issue period begins on the later of:

(i) the date the individual receives a notice of termination or cessation of all health benefits (or if a notice is not received, the date the individual receives notice that a claim has been denied because of such termination or cessation); or

(ii) the date the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter.

(2) In the case of an individual described in subsection (b)(2), (3), (5), or (6) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(3) In the case of an individual described in subsection (b)(4)(A) of this section, the guaranteed issue period begins on the earlier of the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated;

(4) In the case of an individual described in subsection (b)(2), (4)(B) and (C), (5), or (6) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date of disenrollment;

(5) In the case of an individual described in subsection (b)(7) of this section, the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; and

(6) In the case of an individual described in subsection (b) of this section, but not described in paragraphs (1) - (5) of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date of disenrollment.

(e) Extended Medicare Supplement Access for Interrupted Trial Periods.

(1) In the case of an individual described in subsection (b)(5) of this section (or deemed to be so described, pursuant to this paragraph), whose enrollment with an organization or provider

described in subsection (b)(5) of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment as described in subsection (b)(5) of this section.

(2) In the case of an individual described in subsection (b)(6) of this section (or deemed to be so described, pursuant to this paragraph), whose enrollment with a plan or in a program described in subsection (b)(6) of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment as described in subsection (b)(6) of this section.

(3) For purposes of subsection (b)(5) and (6) of this section, no enrollment of an individual with an organization or provider described in subsection (b)(5) of this section, or with a plan or in a program described in subsection (b)(6) of this section, may be deemed to be an initial enrollment under this paragraph after the 2-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

§3.3322. Filing and Approval of Policies, Certificates and Premium Rates; Discontinuance of Forms.

(a) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the Insurance Code and applicable regulations.

(b) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the MMA only with the commissioner in the state in which the policy or certificate was issued.

(c) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the Insurance Code and this subchapter.

(d) Except as provided in paragraphs (1) and (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan. For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy. An issuer may offer, with the approval of the commissioner, one additional policy form or certificate form of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(1) the inclusion of new or innovative benefits; and

(2) the offering of coverage to individuals eligible for Medicare by reason of disability.

(e) Except as provided in paragraph (1) of this subsection, an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(1) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(2) An issuer that discontinues the availability of a policy form or certificate form pursuant to paragraph (1) of this subsection shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(f) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(g) A change in the rating structure or methodology shall be considered a discontinuance under subsection (e)(1) of this section, unless the issuer complies with the following requirements:

(1) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(2) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

(h) The experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in §3.3307 of this title (relating to Loss Ratio Standards and Refund or Credit of Premiums), except that forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2005.

TRD-200501645
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: May 10, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 463-6327

♦ ♦ ♦

CHAPTER 21. TRADE PRACTICES
SUBCHAPTER X. CREDENTIALING OF PHYSICIANS, ADVANCED PRACTICE NURSES AND PHYSICIAN ASSISTANTS

28 TAC §21.3201

The Commissioner of Insurance adopts amendments to §21.3201, concerning the Texas Standardized Credential Application for physicians, advanced practice nurses and physician assistants. The amendments are adopted with one change to the proposed text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10421).

These amendments are necessary to implement Insurance Code Article 21.58D, as amended by Acts 2003, 78th Legislature in §11 of House Bill 1095. Since September 1, 2001, Article 21.58D has required public or private hospitals, health maintenance organizations (HMOs) and preferred provider organizations to use standardized forms developed by the department for the verification of credentials of a physician. Article 21.58D was amended to include advanced practice nurses and physician assistants in the group of professionals whose credentials must be verified, using a standardized form prescribed by the Department of Insurance (department), by public or private hospitals, HMOs and preferred provider organizations.

To effect implementation of Article 21.58D, this amendment adds definitions for "advanced practice nurse" and "physician assistant" to §21.3201. References to "advanced practice nurse" and "physician assistant" are included where appropriate to make clear that the department's standardized form must be used to verify their credentials, and an effective date is specified.

Additionally, minor clarification changes are adopted. These include appropriate renumbering of subsections and paragraphs, and updating a reference to the chapter of the Insurance Code that addresses requirements for HMOs. The language in §21.3201(a) indicating that the department's form is incorporated by reference and the description of the form that appeared at §21.3201(c)(2) are unnecessary and this adoption deletes them.

Finally, the department determined that a statement of a statutory effective date in proposed §21.3201(d) was incorrect. It is corrected in this order.

No comments were received regarding the proposed amendments.

The amendments are adopted under Insurance Code Chapter 1452 (formerly Articles 20A.39 and 21.58D), and §36.001. Chapter 1452 provides the statutory basis for credentialing of physicians and providers, and requires hospitals, HMOs and preferred provider organizations to use forms prescribed by the department when verifying the credentials of physicians, advanced practice nurses and physician assistants. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.3201. Texas Standardized Credentialing Application for Physicians, Advanced Practice Nurses and Physician Assistants.

(a) Purpose and Applicability. The purpose of this section is to identify the standardized credentialing application form required by the Insurance Code Article 21.58D. Hospitals, health maintenance organizations, preferred provider benefit plans, and preferred provider organizations are required to use this form for credentialing and recredentialing of physicians, advanced practice nurses and physician assistants.

(b) Definitions. The following words and terms when used in this section shall have the following meanings:

(1) Advanced practice nurse--An advanced practice nurse as that term is defined by Occupations Code §301.152.

(2) Credentialing--The process of collecting, assessing, and validating qualifications and other relevant information pertaining to a physician or provider to determine eligibility to deliver health care services.

(3) Department--Texas Department of Insurance.

(4) Health maintenance organization--A health maintenance organization as that term is defined by the Insurance Code §843.002(14).

(5) Hospital--A licensed public or private institution as defined by Chapter 241, Health and Safety Code, and any hospital owned or operated by state government.

(6) Physician--An individual licensed to practice medicine in this state.

(7) Physician assistant--A person who holds a license issued under Chapter 204, Occupations Code.

(8) Preferred provider benefit plan--A plan issued by an insurer under the Insurance Code Article 3.70-3C.

(9) Preferred provider organization--An organization contracting with an insurer issuing a preferred provider benefit plan under the Insurance Code Article 3.70-3C, for the purpose of providing a network of preferred providers.

(10) Recredentialing--The periodic process by which:

(A) qualifications of physicians, advanced practice nurses and physician assistants are reassessed;

(B) performance indicators including utilization and quality indicators are evaluated; and

(C) continued eligibility to provide services is determined.

(c) Texas Standardized Credentialing Application. The Texas Standardized Credentialing Application shall be used by all hospitals, health maintenance organizations, preferred provider benefit plan insurers, and preferred provider organizations for credentialing and recredentialing of physicians, advanced practice nurses and physician assistants.

(d) Effective date. The application form is required for initial credentialing or recredentialing that occurs on or after August 1, 2002 for physicians. The application form is required for advanced practice nurses and physician assistants for initial credentialing and recredentialing that occurs on or after May 20, 2003.

(e) Availability. This form may be obtained on the Department's Web site at www.tdi.state.tx.us or from the Texas Department of Insurance, Quality Assurance Section, HMO Division, Mail Code 103-6A, P.O. Box 149104, Austin, Texas 78714-9104; or by calling 1-800-599-SHOP (1476); in Austin, 305-7211. Reproduction of this form without any changes is allowed.

(f) Electronic submission. The form may be submitted electronically to the credentialing entity in the same format as the hard copy form if the credentialing entity accepts such electronic submissions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2005.

TRD-200501692
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: May 15, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 367. AGRICULTURAL WATER CONSERVATION PROGRAM

31 TAC §§367.2, 367.17, 367.18, 367.21 - 367.26

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§367.2, 367.17 and 367.18 and new §§367.21 - 367.26 under the Agricultural Water Conservation Program, without changes to the proposed text as published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1254) and will not be republished.

The rules are adopted as the board's policy on collateral under the nonpoint source pollution control linked deposit program. Under that program, lending institutions agree to make loans to individuals for nonpoint source pollution control projects in exchange for the board's deposit of funds with the institution. These rules provide the requirements on how the deposit of board funds will be collateralized, or secured, as required by the Public Funds Collateralization Act (PFCA).

The board adopts amendments to §367.2 to amend the definition of eligible lending institution. The change will clarify that a state depository is an institution designated by the Texas comptroller of public accounts as a state depository. The section is also amended to add a new definition of pledged security. The term is used throughout the adopted rules, and refers to the securities authorized by the board's rules and the linked deposit agreement to secure the board's deposit of funds with the eligible lending institution.

The board adopts an amendment to §367.17 to clarify that when the executive administrator withdraws funds under the linked deposit agreement or because the institutions cease to be eligible to hold the board's funds, such withdrawal shall be without penalty and shall include withdrawal of accrued interest.

The board adopts an amendment to §367.18 to clarify that the amount of funds required to be deposited as collateral is governed by the newly adopted §367.21 rather than the amount of funds deposited with the lending institution. The difference is that the new provision specifies that the total amount of securities must include accrued interest, and may be reduced by the amount of federal insurance (i.e., FDIC) on the funds.

The board adopts new §367.21 to describe the collateral requirements. New subsection (a) establishes that the funds the board deposits must be secured in an amount not less than the amount on deposit under the linked deposit agreement increased by the amount of any accrued interest and reduced to the extent the deposit is insured by the United States or its instrumentality. This provision reflects the requirements in the PFCA, and assures the board's deposits are fully secured. New subsection (b) establishes the value of the securities as the market value from a nationally recognized financial information service based upon the previous day's closing market quotations. This establishes a neutral method for valuation based upon an industry standard, and establishes a specific time for the valuation. This also is the method used to value securities under the board's rules on investments in 31 TAC Chapter 365, thereby providing consistency between board programs in similar situations. New subsection (c) requires additional collateral to be pledged if the market value falls below the funds on deposit by the board, in order to assure full collateralization of the board's deposit, and also allows a reduction in collateral if the market value exceeds the board's funds on deposit, and if allowed in the linked deposit agreement. New subsection (d) lists the securities that will be accepted to secure board deposits, and new subsection (e) lists those securities that will not be accepted. The list is taken from the Public Funds Investment Act, §2256.009, and provides a conservative approach to collateralization that will limit the board's risk in the deposit of its funds. New subsection (f) allows a lending institution to substitute one group of eligible securities with other eligible securities, thereby providing flexibility for the lending institutions while at the same time assuring adequate protection of the board's deposits. New subsection (g) allows the executive administrator to further limit the selection of securities in the linked deposit agreement, thereby allowing for situation-specific evaluation.

New §367.22 through §367.26 include specific provisions of the PFCA into board rules in order to put lending institutions and custodians on notice of these requirements. Specifically, new §367.22 establishes the requirements for the lending institutions to maintain records and the ability of the comptroller or executive administrator to examine such records and securities. New §367.23 requires the lending institution to deposit the securities issued with a custodian, which must execute a written agreement with the executive administrator regarding the terms and conditions of how the funds will be secured. Still tracking the requirements of the PFCA, the section further provides which entities are eligible to be a custodian, and that the custodian holds the pledged securities in trust, and acts as a bailee or agent of the board. It establishes the requirements of a custodian to record the receipt of a pledged security and issue a trust receipt to the executive administrator. It further establishes that the eligible lending institution shall pay any charges of the custodian bank for accepting and holding the securities.

New §367.24 allows the custodian to deposit a pledged security with a specified list of institutions, and establishes the duties of the institution into which the pledged security is deposited, in a manner that reiterates the requirements of the PFCA. New §367.25 requires the custodian to maintain records regarding the pledged securities and transactions relating to them, allows the executive administrator and comptroller to examine the securities or records of the custodian, and requires custodians to file a collateral report with the comptroller. New §367.26 establishes, as required by the PFCA, that an audit or regulatory examination of lending institutions and custodians must include an examination and verification of pledged securities and records relating to such, and that significant or material noncompliance with the requirements of board rule and the PFCA shall be reported to the comptroller and board.

There were no comments received on the proposed amendments and new sections.

The amendments and new sections are adopted under the authority of the Texas Water Code §6.101 and §17.905, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and for the linked deposit program.

The statutory provisions affected by the amendments and new sections are Texas Water Code, Chapter 17, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2005.

TRD-200501609
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 9, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 475-2052

♦ ♦ ♦

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER C. NONPOINT SOURCE POLLUTION CONTROL PROJECT AND ESTUARY MANAGEMENT FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§375.302, 375.354 and 375.355 and new §§375.358 - 375.363 under Clean Water State Revolving Fund, without changes to the proposed text as published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1257) and will not be republished.

The rules are adopted as the board's policy on collateral under the nonpoint source pollution control linked deposit program. Under that program, lending institutions agree to make loans to individuals for nonpoint source pollution control projects in exchange for the board's deposit of funds with the institution. These rules provide the requirements on how the deposit of board funds will be collateralized, or secured, as required by the Public Funds Collateralization Act (PFCA).

The board adopts an amendment to §375.302 to add a definition of pledged security. The term is used throughout the adopted rules, and refers to the securities authorized by the board's rules and the linked deposit agreement to secure the board's deposit of funds with the eligible lending institution.

The board adopts an amendment to §375.354 to clarify that when the executive administrator withdraws funds under the linked deposit agreement or because the institutions cease to be eligible to hold the board's funds, such withdrawal shall be without penalty and shall include withdrawal of accrued interest.

The board adopts an amendment to §375.355 to clarify that the amount of funds required to be deposited as collateral is governed by the newly adopted §375.358 rather than the amount of funds deposited with the lending institution. The difference is that the new provision specifies that the total amount of securities must include accrued interest, and may be reduced by the amount of federal insurance (i.e., FDIC) on the funds.

The board adopts new §375.358 to describe the collateral requirements. New subsection (a) establishes that the funds the board deposits must be secured in an amount not less than the amount on deposit under the linked deposit agreement increased by the amount of any accrued interest and reduced to the extent the deposit is insured by the United States or its instrumentality. This provision reflects the requirements in the PFCA, and assures the board's deposits are fully secured. New subsection (b) establishes the value of the securities as the market value from a nationally recognized financial information service based upon the previous day's closing market quotations. This establishes a neutral method for valuation based upon an industry standard, and establishes a specific time for the valuation. This also is the method used to value securities under the board's rules on investments in 31 TAC Chapter 365, thereby providing consistency between board programs in similar situations. New subsection (c) requires additional collateral to be pledged if the market value falls below the funds on deposit by the board, in order to assure full collateralization of the board's deposit, and also allows a reduction in collateral if the market value exceeds the board's funds on deposit, and if allowed in the linked deposit agreement. New subsection (d) lists the securities that will be accepted to secure board deposits, and new subsection (e) lists those securities that will not be accepted. The list is taken from the Public Funds Investment Act, §2256.009, and provides a conservative approach to collateralization that will limit the board's risk in the deposit of its funds. New subsection (f) allows a lending institution to substitute one group of eligible securities with other eligible securities, thereby providing flexibility for the lending institutions while at the same time assuring adequate protection of the board's deposits. New subsection (g) allows the executive administrator to further limit the selection of securities in the linked deposit agreement, thereby allowing for situation-specific evaluation.

New §375.359 through §375.363 include specific provisions of the PFCA into board rules in order to put lending institutions and custodians on notice of these requirements. Specifically, new §375.359 establishes the requirements for the lending institutions to maintain records and the ability of the comptroller or executive administrator to examine such records and securities. New §375.360 requires the lending institution to deposit the securities issued with a custodian, which must execute a written agreement with the executive administrator regarding the terms and conditions of how the funds will be secured. Still tracking the requirements of the PFCA, the section further provides which entities are eligible to be a custodian, and that the custodian holds the pledged securities in trust, and acts as a bailee or agent of the board. It establishes the requirements of a custodian to record the receipt of a pledged security and issue a trust receipt to the executive administrator. It further establishes that the eligible lending institution shall pay any charges of the custodian bank for accepting and holding the securities.

New §375.361 allows the custodian to deposit a pledged security with a specified list of institutions, and establishes the duties of the institution into which the pledged security is deposited, in a manner that reiterates the requirements of the PFCA. New §375.362 requires the custodian to maintain records regarding the pledged securities and transactions relating to them, allows the executive administrator and comptroller to examine the securities or records of the custodian, and requires custodians to file a collateral report with the comptroller. New §375.363 establishes, as required by the PFCA, that an audit or regulatory examination of lending institutions and custodians must include an examination and verification of pledged securities and records relating to such, and that significant or material noncompliance with the requirements of board rule and the PFCA shall be reported to the comptroller and board.

There were no comments received on the proposed amendments and new sections.

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §375.302

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.611, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and for the linked deposit program.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2005.

TRD-200501610
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 9, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 475-2052

♦ ♦ ♦

DIVISION 3. NONPOINT SOURCE POLLUTION LINK DEPOSIT PROGRAM

31 TAC §§375.354, 375.355, 375.358 - 375.363

The amendments and new sections are adopted under the authority of the Texas Water Code §6.101 and §15.611, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and for the linked deposit program.

The statutory provisions affected by the amendments and new sections are Texas Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2005.

TRD-200501611
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: May 9, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 475-2052

♦ ♦ ♦

PART 16. COASTAL COORDINATION COUNCIL

CHAPTER 501. COASTAL MANAGEMENT PROGRAM

SUBCHAPTER B. GOALS AND POLICIES

31 TAC §501.26

The Texas Coastal Coordination Council (Council) adopts amendments to §501.26 relating to Policies for Construction in the Beach/Dune System. The amendment to §501.26(b) is adopted with changes to the proposed text published in the October 22, 2004 issue of the *Texas Register* (29 TexReg 9812). The proposed text included an amendment to §501.26(b)(5), relating to the construction of shore protection projects in sea turtle nesting areas, and a proposed amendment to §501.26(b)(6), relating to construction of shore protection projects on stable and accreting beaches. The Council adopts the proposed amendment to §501.26(b)(5) as published on October 22, 2004, to allow for the location of shore protection projects in permitted areas as long as such projects do not "adversely affect sea turtle nesting areas or an endangered species." The Council is not adopting the proposed amendment to §501.26(b)(6), which would have specifically allowed for the construction of shore protection projects on stable or accreting beaches as long as such projects were "landward of the foredune ridge, or where there is no foredune ridge, landward of the line of vegetation," in light of issues raised by public comment.

The Council is amending §501.26(b)(5) to allow for the location of shore protection projects in permitted areas as long as such projects do not adversely affect sea turtle nesting areas or an endangered species. Section 501.26(b)(5) currently prohibits the location of a shore protection project in a sea turtle nesting area or in any other location where the project will adversely affect an endangered species. The Council is amending §501.26(b)(5) to make consistency determinations relating to shore protection projects uniform for both sea turtle nesting areas and other endangered species. Under the current rule, consistency determinations regarding sea turtle nesting areas depend on whether the particular location is, in fact, a sea turtle nesting area. If it is, then a shore protection project is prohibited. If another endangered species is involved, however, the determination is limited to whether that endangered species is adversely affected.

Potential sea turtle nesting areas have expanded to cover most of the Texas coast, including areas where shore protection projects currently exist. The U.S. Fish and Wildlife Service (USFWS), which regulates actions under the Endangered Species Act, informally considers all Texas beaches bordering on the seaward shore of the Gulf of Mexico as potential sea turtle nesting areas. Thus, the current rule could be interpreted in a manner that would preclude the construction of shore protection projects along the entire Texas coast, even in areas where sea turtles have never been present, and even if construction activities are limited and controlled to minimize the effects on sea turtle nesting activities.

The Council believes that the focus of the consistency determination should be on whether construction activities connected with a shore protection project actually affect sea turtle nesting areas adversely, rather than on whether or not that particular area might be a nesting area. By changing this rule to require the avoidance of any adverse impacts to a sea turtle nesting area, the Council's intent is that any shore protection project must be designed and constructed so as to avoid impacts to all sea turtle nesting areas, whether or not they are designated as sea turtle nesting areas or habitat, are designated as potential nesting areas, or include areas of the coast with documented past nesting activity.

Representatives of the following entities provided comments generally in favor of the proposed rulemaking related to turtle nesting areas: Galveston County, Texas.

Representatives of the following organizations provided comments generally opposed to the proposed rulemaking related to turtle nesting areas: Help Endangered Animals-Ridley Turtles (HEART), and Sierra Club Galveston Group.

A representative of HEART commented that beach nourishment projects should never be conducted during sea turtle nesting season. The Council disagrees. Beach nourishment is often required in conjunction with the construction of a shore protection project. The rule, as amended, requires that shore protection projects must avoid adverse impacts to sea turtle nesting areas or an endangered species. Applicants will be required to demonstrate that the construction of a project will not adversely impact sea turtle nesting areas, whether or not the construction will occur during sea turtle nesting season. No change was made in response to this comment.

The same commenter also said that the Land Office should also set guidelines for lighting that will not attract sea turtles and hatchlings to roads where they will be killed by vehicles. The Council agrees. The Land Office has indicated to the Council that it is developing a comprehensive educational program to minimize impacts to nesting sea turtles for not only nourishment projects and shore protection projects, but beach maintenance practices and the general public's use of the beach as well. The educational program will address the issue of lighting, and the danger it may pose to nesting sea turtles. No change was made in response to this comment.

One commenter stated that a project was not monitored for sea turtle nesting areas because federal money was not involved. The rule requires that shore protection projects must avoid adverse impacts to sea turtle nesting areas or an endangered species. Applicants will be required to demonstrate that the construction of a project will not adversely impact sea turtle nesting areas. Also, the Land Office has indicated to the Council that it is currently implementing an educational and training program for beach maintenance personnel as well as local governments permitting projects such as sand fencing to ensure that sea turtle nesting is not adversely affected by activities on the beach. No change was made in response to this comment.

The same commenter also noted that beach nourishment projects create escarpments that can harm sea turtles. The Council agrees. The rule requires that shore protection projects must avoid adverse impacts to sea turtle nesting areas or an endangered species. Applicants will be required to demonstrate that the construction of a project will not adversely impact sea turtle nesting areas. In assuring that sea turtle nesting areas are not adversely affected, post-project grading will be required that will first provide for inspection to ensure that no turtles have nested in the escarpment, then the escarpment will be graded to provide a natural slope conducive to nesting sea turtles. No change was made in response to this comment.

One commenter representing the Sierra Club Galveston Group opposes amending the Council's rules to allow beach replenishment, armoring and protection during the Kemp's ridley sea turtle nesting season, and stated that there has been inadequate investigation regarding potential harm to the endangered Kemp's ridley sea turtle. The Council disagrees with this comment. The rule requires that shore protection projects must avoid adverse impacts to sea turtle nesting areas or an endangered species. Applicants will be required to demonstrate that the construction of a project will not adversely impact sea turtle nesting areas. No change was made in response to this comment.

One commenter stated that the language as found in the proposed rule revision is consistent with language provided by the U.S. Fish & Wildlife Service in their concurrence letters for the Galveston Island and Bolivar Peninsula repair projects. The Council agrees with the commenter. No change was made in response to this comment.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

This amendment is adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.055, which requires the Council to hold public hearings, as deemed appropriate, to consider amendments to the CMP; and §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule.

Texas Natural Resources Code §§33.051, 33.052, 33.053, 33.054, 33.055, and 33.204 are affected by this proposed rulemaking.

§501.26. Policies for Construction in the Beach/Dune System.

(a) Construction in critical dune areas or areas adjacent to or on Gulf beaches shall comply with the following policies:

(1) Construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation shall be prohibited.

(2) Construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse "effects" (as defined in §15.2 of this title (relating to Coastal Area Planning) on the sediment budget and critical dune areas are avoided

to the greatest extent practicable. For purposes of this section, practicability shall be determined by considering the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Cost of the technology or technique shall also be considered. Adverse effects (as defined in Chapter 15 of this title (relating to Coastal Area Planning) that cannot be avoided shall be:

(A) minimized by limiting the degree or magnitude of the activity and its implementation;

(B) rectified by repairing, rehabilitating, or restoring the adversely affected dunes and dune vegetation; and

(C) compensated for on-site or off-site by replacing the resources lost or damaged seaward of the dune protection line.

(3) Rectification and compensation for adverse effects that cannot be avoided or minimized shall provide at least a one-to-one replacement of the dune volume and vegetative cover, and preference shall be given to stabilization of blowouts and breaches and on-site compensation.

(4) The ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced.

(5) Non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods. Subdivisions shall not authorize the construction of a new erosion response structure within the beach/dune system, except as provided by subsection (b) of this section or a retaining wall located more than 200 feet landward of the line of vegetation. Subdivisions shall not authorize the enlargement, improvement, repair or maintenance of existing erosion response structures on the public beach. Subdivisions shall not authorize the repair or maintenance of existing erosion response structures within 200 feet landward of the line of vegetation except as provided in §15.6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(b) Construction of structural shore protection projects, including geotextile shore protection projects, in critical dune areas or areas adjacent to or on Gulf Beaches shall comply with the following policies:

(1) The size and the length of a shore protection project shall be determined as part of a site-specific construction and maintenance plan, taking into account both technical requirements and policy issues as described under this subsection, and shall be limited to the minimum size necessary to fulfill the project's goals and purposes.

(2) A shore protection project shall only be used to protect community developments, public infrastructure, and for other lawful public purposes and shall not be used solely to protect individual structures or properties. A community development may include a neighborhood or aggregation of residences or commercial structures.

(3) A shore protection project located parallel to the shore shall be located landward of the boundary of state-owned submerged land as determined by a coastal boundary survey conducted in accordance with Texas Natural Resources Code §33.136, and shall avoid and otherwise minimize adverse effects to dunes and dune vegetation.

(4) To maximize the protection offered by a shore protection project, to enhance the survivability of the project, and to minimize adverse effects to natural resources, a shore protection project shall be located according to the following preferred order:

(A) In an area where a foredune ridge is present, where practicable, a shore protection project shall be located landward of the foredune ridge;

(B) Where there is no foredune ridge, a project shall be located landward of the line of vegetation, where practicable;

(C) Where it is not practicable to locate a shore protection project landward of the line of vegetation, a project shall be located at the line of vegetation; or

(D) Where there is no other practicable location, a shore protection project shall be located at the most landward point of the public beach provided that the project sponsor has provided financial assurance that the pre-project beach width will be maintained through beach nourishment.

(5) A shore protection project shall not adversely affect sea turtle nesting areas or an endangered species.

(6) Shore protection projects shall not be constructed on stable or accreting beaches.

(7) A shore protection project shall be designed to avoid and otherwise minimize any adverse effects to adjacent beaches or properties at either end of a project.

(8) To the extent allowed by law, a dune protection permit is required to authorize the construction of a shore protection project in the beach/dune system.

(9) A mitigation plan shall be submitted for any adverse effects to critical dune areas as a result of the construction and presence of a shore protection project.

(10) Public input shall be incorporated into a local government's review and approval of a shore protection project. Methods to obtain public input include public meetings, notices by mail to affected property owners, publication of notices in local newspapers, the *Texas Register*, and web sites.

(11) The success criteria for a shore protection project shall be developed by a project sponsor with consideration for the health and maintenance of the beach/dune system.

(12) The sponsor of a shore protection project shall be responsible for the ongoing maintenance of the project and, if necessary, beach nourishment and/or removal of the project.

(13) Sand from the beach/dune system shall not be used to fill or cover a shore protection project. Where appropriate, a shore protection project shall remain covered with sand and dune vegetation with a preference for natural dune vegetation. The sand and vegetation used to cover a shore protection project shall conform to the standards for dune restoration projects as described in §15.4 (relating to Dune Protection Standards) and §15.7, (relating to Local Government Management of the Public Beach) of this title.

(14) Long-term monitoring of a shore protection project shall be required to determine the project's effect on the beach/dune system and the project's effectiveness. Prior to the construction of a shore protection project, a project sponsor shall collect scientifically valid baseline data for monitoring the line of vegetation, the extent of the dry beach, a beach profile, and any other characteristics necessary for evaluating the project's effectiveness.

(15) Existing public access in the area of a shore protection project shall be replicated if not enhanced. A local government shall not impair or close an existing public access point or close a public beach to pedestrian or vehicular traffic without prior approval of the GLO as required under the Open Beaches Act, Texas Natural Resource

Code Annotated, Chapter 61, and the Beach/Dune rules, Chapter 15 of this title.

(c) The GLO shall comply with the policies in this section when certifying local government dune protection and beach access plans and adopting rules under the Texas Natural Resources Code, Chapters 61 and 63. Local governments required by the Texas Natural Resources Code, Chapters 61 and 63, and Chapter 15 of this title (relating to Coastal Area Planning) to adopt dune protection and beach access plans shall comply with the applicable policies in this section when issuing beachfront construction certificates and dune protection permits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2005.

TRD-200501655
Trace Finley
Policy Director, General Land Office
Coastal Coordination Council
Effective date: May 11, 2005
Proposal publication date: October 22, 2004
For further information, please call: (512) 305-8598

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TEXAS HIGHWAY PATROL
SUBCHAPTER B. ENFORCEMENT ACTION

37 TAC §3.28

The Texas Department of Public Safety adopts amendments to §3.28, concerning Citation Disposition Receipt Program without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 512) and will not be republished.

Amendments to the section are necessary in order to clarify the specific circumstances under which a Trooper may utilize the Citation Disposition Receipt Program.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2005.

TRD-200501646
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: May 10, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 424-2135

♦ ♦ ♦

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.161, §15.162

The Texas Department of Public Safety adopts new §15.161 and §15.162, concerning the Driver Responsibility Program with changes to the proposed text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10467). These rules will be republished.

Chapter 708 of the Texas Transportation Code grants the department the authority to adopt rules to implement the Driver Responsibility Program. This program was created during the 78th Legislative Session and requires the department to assess fees based on an individual's driver history. The program has two major components, a point system and a conviction surcharge system. Individuals are required to pay the assessed fee, which ranges from $100 to $2000, every year for three years.

The statute specifically requires the department to establish rules regarding the acceptance of installment payments. The department has contracted with a vendor to process the surcharge payments. As such, the vendor, acting on behalf of the department, will accept installment agreements to the extent outlined in this rule. This rule will provide necessary information to the general public regarding the use of a vendor and the acceptance of installment agreements under the Driver Responsibility Program.

The department accepted written comments on the proposed rules through March 10, 2005. Written comments were submitted by Marc Fellman, a student attorney with the University of Texas School of Law Criminal Defense Clinic. The department also received correspondence from Rick Habecker of Cedar Park, supporting the Driver Responsibility Program and encouraging the department to offer installments agreements. During the comment period, the department also received input from the State Auditor's Office pertaining to the text of the proposed rules.

At the request of the Texas Criminal Defense Lawyers Association, a public hearing was conducted on March 10, 2005. Comments were received from Richard Segura, an Austin area attorney, and Marc Fellman.

The substantive comments, as well as the department's responses thereto, are summarized below:

Comment: The Notice published on November 12, 2004 states that the points surcharge is based on Class C traffic offenses. However, the moving violations adopted by the department include Class C offenses plus other more serious offenses. This is not explained.

Response: The preamble to the proposed rule contains a brief and generalized synopsis of the Driver Responsibility Program. The department is confident that the information contained in

the original publication provided sufficient notice to the public regarding the nature and content of the proposed rules.

Comment: The Notice indicates no fiscal implications to the State as a result of these rules. It is difficult to understand how this can be so since the Fiscal Note explaining HB 3588 explains considerable revenue is expected to be generated as a result of the surcharge fees for the State.

Response: The purpose of the proposed rules is to provide general information to the public regarding the use of a vendor and the acceptance of installment agreements. No fiscal impact with regard to the revenue generated by the Driver Responsibility Program is anticipated as a result of the adoption of the proposed rules.

Comment: The Notice indicates no fiscal implications to local economies and local government as a result of these rules. This statement does not take into account the direct costs of enforcement that will be passed onto local economies as a result of enforcing the rules, in particular the acceleration for a missed payment and licensure suspension. The predictable result of suspending licenses will be an increase in arrests for Driving While License Suspended which will in turn increase costs to local jails and County and Municipal Courts.

Response: The department disagrees with this comment. Proposed §15.162 provides general information regarding installment agreements and advises the public what steps must be taken to enter into an installment agreement, when payments are due and what constitutes a minimum payment. Whether or not an individual enters into an installment agreement has no direct fiscal impact on local economies or local governments. The overall effect of enforcing the provisions of the Driver Responsibility Program, including the potential increase in the number of arrests for Driving While License Invalid, was considered by the Texas Legislature prior to the enactment of HB 3588.

Comment: The failure to properly notify the public as to impact of these rules affects the quality of the comments received and the public's ability to participate. The department should analyze the true costs and republish the rules with the same publicity it advertised the program in its Press Releases.

Response: The department disagrees with this comment. The agency has complied with all statutory requirements related to this rulemaking process and is confident that the information contained in the original publication provided sufficient notice to the public regarding the nature and content of the proposed rules.

Comment: The fiscal impact to individuals is not specified. The Notice should state the precise percentage or range of percentage that the vendor may charge individuals for installments. In other words, the additional cost to individuals for entering into an installment payment as opposed to paying in full should be specified in the rules.

Response: The department disagrees with this comment. The purpose of proposed §15.162 is to provide general information to the public regarding installment agreements. The Surcharge Notice mailed to every individual subject to a surcharge requirement provides specific information pertaining to the actual amount of the surcharge and the additional fees associated with an installment agreement.

Comment: §15.161(a) indicates that a vendor will be sending notices to individuals. Texas Transportation Code, §708.151 requires that the department and not the vendor send the notice. This is an important distinction because the department is a government body that does not have any pecuniary conflict of interest and will not directly profit from the enforcement or non-enforcement of any particular provision.

Response: The department disagrees with this comment. Texas Transportation Code, §708.155 provides that the department may contract with a private vendor *for the provision of services* for the collection of surcharges receivable and related costs. The department has construed this provision to permit the agency to contract with a vendor to perform all necessary tasks to ensure the efficient implementation of the Driver Responsibility Program, including sending notices, collecting fees and other related administrative functions. The department's objective is to enforce the law and the vendor, as an agent of the department, is held to the same standard.

Comment: §15.161(b) requires the public to make payments through the vendor. This does not serve a public purpose but only ensures the vendor collects its fee. It is in the public interest for individuals to the extent possible to directly pay DPS. The rules should make an allowance for individuals to pay DPS.

Response: The department disagrees with this comment. As previously indicated, the efficient administration of the Driver Responsibility Program requires that the vendor handle general administrative aspects of the program, including the collection process. As such, the suggested amendment is not required.

Comment: §15.161(c) does not define "additional cost" and the term is not defined in the statute. Is this the same as "related cost" in Chapter 708.155 of the Transportation Code? The ambiguity inherent in failing to define this term would permit the vendor and/or DPS to later change or add to the amounts or nature of the charges defined as "additional costs" without notifying the public. The statutory authority to do this is not present in the statute unless the term is strictly related to costs of either: (1) a credit card transaction in which the vendor or DPS incurs a fee; or (2) attorneys fees to collect on a surcharge.

Response: The department used the term "additional costs" to mean "related costs." However, based on this comment, the proposed rule has been amended to reference the term "related costs" as utilized in Texas Transportation Code, §708.155. For purposes of clarification, "related costs" are optional service fees charged in addition to the vendor's fee, including credit card transaction fees, electronic check service fees and partial payment fees associated with installment agreements. General information regarding these costs is contained in the Surcharge Notice mailed to every individual subject to a surcharge requirement.

Comment: §15.161(c) does not define "fails to pay the... any additional cost." This does not specify what procedure is due to an individual if the failure to pay occurs because of an error of the Department of Public Safety or an error of the vendor. This does not specify whether any conditions justify, mitigate, or excuse the payment of the installment fee, such as the preemptive effect of federal law or a judicial order.

Response: The department is committed to maintaining accurate and complete driver records. The agency's standard business practice is to fully investigate any claim regarding a potential error, regardless of whether or not it pertains to a surcharge or cost associated with the Driver Responsibility Program. It is not necessary to create an administrative rule to further define the agency's error resolution process. In addition, the governing statute does not provide for any conditions that justify, mitigate

or excuse the payment of any fee associated with the Driver Responsibility Program.

Comment: §15.161 states that an individual that fails to pay any installment fee or related cost will be subject to a revocation action. However, Chapter 708 does not authorize revocation actions, only suspensions. The term "revocation action" should be defined if used and the time period should be specified.

Response: The department agrees with this comment and has amended the proposed rules to change all references from "revocation" to "suspension."

Comment: §15.162 is entitled "Installment Agreements" yet the installment agreements are never defined or explained. The term "installment agreement" clearly contemplates a written agreement and the failure to provide one will allow for the abuse of Texas citizens by the vendor or its agents. The vendor or its agents could state anything over the telephone to a citizen in order to facilitate a payment. Without a written agreement, Texas citizens do not know what limits have been placed on the vendor and do not know when their rights have been violated.

Response: The department disagrees with this comment. Texas Transportation Code, §708.153 does not require the agreement to be formally documented and grants the department the authority to adopt rules governing the payment of surcharges in installments. Proposed §15.162 clearly states what steps must be taken to enter into an installment agreement, when payments are due and what constitutes a minimum payment. The Surcharge Notice mailed to every individual subject to a surcharge requirement provides further information regarding installment agreements.

Comment: §15.162(b) "additional processing fee" would require additional statutory authority that has not been provided for in the statute. This is not a fee that the department can impose to the surcharge by legislative rule. The clear language of the statute defines surcharge amounts and the rules should do in accordance with the text of statute.

Response: The department disagrees with this comment. Texas Transportation Code, §708.155 provides that the total amount of compensation received by the vendor may not exceed 30% of the amount of the surcharge and related costs collected. The current contract provides that the vendor will be compensated in an amount equal to 4% of the surcharge assessed. If a person subject to a surcharge requirement elects to pay the surcharge in installments, the contract permits the vendor to charge an additional $2.50 installment payment fee per payment. The vendor contract specifically states that the total compensation cannot exceed the 30% authorized by the governing statute. As such, the department is within its statutory authority to adopt this rule.

Comment: §15.162(c) allows for an installment agreement to be formed by an individual paying the "minimum amount due." However, the department does not define the minimum amount due precisely. The department does not specify the "minimum amount due" and reference it to the various surcharged offenses.

Response: The department disagrees with this comment. The minimum amount due is determined by the total surcharge owed. Proposed §15.162(k) advises the public how to determine the minimum payment given a general range of surcharge requirements. Furthermore, the Surcharge Notice mailed to every individual subject to a surcharge requirement provides examples (in dollars) of the minimum amount due.

Comment: §15.162(c) does not specify whether an individual can enter into an installment agreement without being told by the vendor or the department. This is a problem because installment agreements that are created without the knowledge of the individual are void because it is unfair to bind someone to a contract without their knowledge.

Response: The department disagrees with this comment. The decision to enter into an installment agreement rests entirely with the person against whom the surcharge was assessed. As previously stated, proposed §15.162 clearly states what steps must be taken to enter into an installment agreement, when payments are due and what constitutes a minimum payment.

Comment: §15.162(c) states "The individual is not required to provide written declaration of the installment agreement." However, it does not clarify whether the individual has a right to receive an installment agreement from the department or the vendor. A copy of the installment agreement should be sent with the notice letter.

Response: The department disagrees with this comment. Proposed §15.162(c) is intended to simplify the process in that it does not require an official declaration of the intent to enter into an installment agreement. Payment of the minimum amount due automatically establishes an installment agreement. The department does not intend to create a document formalizing the agreement.

Comment: §15.162(c) allows the vendor's acceptance of a payment to determine whether an individual is aware of the consequences of entering into an installment agreement. This is counterintuitive and violates fundamental principles of fairness and contract law. Whether an individual is aware of the consequences of any action cannot be defined by whether the vendor accepts a payment from that person.

Response: The department agrees that the language contained in proposed §15.162(c) may be confusing to the public. Based on this comment, the department has amended proposed §15.162(c) by deleting the phrase "and denotes that the individual is aware of the agreement as well as the consequences for failing to uphold the agreement."

Comment: §15.162(d) requires payment in 30 days or implies revocation will occur. There is no statutory authority for revocation. This should be excised from the rules as an ultra vires action of the agency and also as an action that does not benefit the public interest.

Response: As previously stated, the department has amended the proposed rules to change all references from "revocation" to "suspension."

Comment: The department should not suspend any licenses if the person cannot pay because the person is indigent. Texas law has long recognized that if a person lacks financial resources and can make a showing to that effect, the Excessive Fines Clause of the Texas Constitution requires that the individual be accommodated. The department should develop rules allowing for an individual to show proof of indigent status.

Response: The department disagrees with this comment. The Texas Legislature, in enacting HB 3588, could have provided a mechanism by which the department was required to consider a person's ability to pay a surcharge assessed under the Driver Responsibility Program. However, absent statutory language to

that effect in Texas Transportation Code, Chapter 708, the department does not have the authority to adopt a rule that waives a surcharge for certain individuals based on indigent status.

Comment: §15.162(e) allows for a revocation to be lifted if an individual has made no payments but does not provide for the lifting of a revocation if payments have in fact been made after an installment agreement is made but have been late. This situation is counterintuitive and in fact provides a reverse incentive for individuals NOT to make any payments for as long as possible. The department should provide rules and mechanism for all revocations/suspensions to be lifted.

Response: The department disagrees with this comment. A person who has not yet entered into an installment agreement may do so at any time. Proposed §15.162(e) is designed to encourage individuals who have been suspended to comply with the law. However, individuals who have demonstrated that they will not comply with the terms of an installment agreement will not be permitted to enter into another agreement for the same surcharge requirement. The plain language of Texas Transportation Code, §708.153(b)(2) clearly contemplates this situation and authorizes the department to adopt a rule that ensures the orderly collection of surcharge payments.

Comment: §15.162(f) is arbitrary and capricious. It does not define "attempt to enter into an installment agreement." It is unclear what behavior or conduct the department is attempting to penalize with a revocation action by virtue of creating this rule. The definition of entering into an installment agreement is to make the minimum payment. How then can one attempt to enter into an installment agreement without in fact making that minimum payment? The rule fails to provide sufficient notice as to what conduct is prohibited. The department should specify what specifically it considers an "attempt to enter into" and also not include a good faith mistake or inability to pay as grounds for revocation.

Response: The department disagrees that proposed §15.162(f) is arbitrary and capricious. However, based on this comment, the proposed rule has been amended to clarify that submission of less than the minimum payment needed to establish an installment agreement in a timely manner will result in suspension action. As previously stated, indigent status does not excuse the obligation to pay the surcharge. Furthermore, the department cannot excuse the failure to pay a surcharge due to a good faith mistake absent specific statutory authority.

Comment: In §15.162(f), the term "specific surcharge requirement" is not defined. If the department means the assessment for the entire year, then it should state that in the rule. However, because the statute does not require such a severe penalty, the department should allow an individual to cure any default or inability to enter an agreement if good cause is shown. The department should adopt rules defining good cause.

Response: The department disagrees with this comment. "Specific surcharge requirement" refers to the total surcharge for which the individual, for whatever reason, failed to submit the minimum payment. This reference does not require further definition. As previously stated, individuals who have demonstrated that they will not comply with the terms of an installment agreement will not be permitted to enter into another agreement for the same surcharge requirement.

Comment: In §15.162(f) the term "associated fees" is not defined. The department's authority to require payment of any "associated fees" is not provided for in the statute. Prior to making rules that require or impose additional financial burdens on individuals, the department must have additional statutory authority that has not been provided for in the statute. This is not a fee that the department can impose to the surcharge by legislative rule. The clear language of the statute defines surcharge amounts and the rules should do in accordance with the text of the statute.

Response: The department used the term "associated fees" to mean "related costs." However, based on this comment, the proposed rule has been amended to reference "related costs" as utilized in Texas Transportation Code, §708.155. As previously indicated, "related costs" are optional service fees charged in addition to the vendor's fee, including credit card transaction fees, electronic check service fees and partial payment fees associated with installment agreements. General information regarding these costs is contained in the Surcharge Notice mailed to every individual subject to a surcharge requirement.

Comment: §15.162(g) states the surcharge is due on the same date each month. However, this requirement does not take into account the fact that the dates for some individuals each month will fall on Saturdays and Sundays as well as official holidays. The rules should specify that an official holiday or weekend provides a grace period until the next working day.

Response: The department disagrees that the rule should be amended to specifically provide for a grace period. The vendor processes payments on Saturdays. However, current business practice provides that payments due on a Sunday or holiday are considered timely if received by the next business day. To further clarify payment due dates, the department has amended the text of proposed §15.162(g) by removing the word "received" to clarify that the payment due date is based on the date of the Surcharge Notice, not the date that the Surcharge Notice was received. Also, proposed §15.162(g)(1) has been amended to reflect the current business practice of extending the payment due date to the next business day if the payment is due on the 29th, 30th or 31st in months that do not have those dates.

Comment: §15.162(h) uses the term "fails to provide a timely payment" without defining that term. Is timely payment within the discretion of the vendor to determine? If so, the vendor has a conflict of interest. May the vendor bargain with the individual to require more frequent payments and thus increase its overall interest rate in the form of "partial payment fees?" This sort of conflict of interest will lead to unequal application of the law based on factors that the Legislature neither contemplated nor desired. The rule should specifically define "timely payment" and provide for a grace period for good cause so as to prevent the vendor from applying its own standards that may be unequal and self-interested.

Response: The department disagrees with this comment. Proposed §15.162(g) specifically provides that subsequent installment payments are due each month on the same date as the date of the Surcharge Notice. The Surcharge Notice advises the person that the initial payment must be received within thirty days from the date of the letter. The vendor does not select the initial payment date, nor can the vendor change the date for future payments. Therefore, no further clarification is required.

Comment: Insofar as §15.162(h) imposes a revocation for the failure to make a timely payment, it exceeds the statutory authority of the department. Chapter 708 specifically states what conduct authorizes the department to suspend a license, and a late

payment is not specified as a grounds upon which the department may suspend a license. Therefore, the department should not include a penalty at all.

Response: The department disagrees with this comment. Texas Transportation Code, §708.152(a) provides that if the person fails to pay the amount of a surcharge or fails to enter into an installment agreement before the 30th day after the date the department sends notice, the license is suspended. Furthermore, Texas Transportation Code, §708.153(b)(2) authorizes the department to adopt a rule which declares the amount of the unpaid surcharge immediately due and payable if the person fails to make a required installment payment. As such, the department has the authority to take suspension action if an individual fails to make a timely installment payment and is considered in default of the agreement.

Comment: §15.162(h) insofar as it improperly delegates the administrative responsibilities of the department to the department's vendor is not in the public interest. Chapter 708 provides for the department to perform functions that are essential governmental and/or police exercises such as taxing or revoking a license. Because this rule delegates authority to a private vendor without clear safeguards and such delegation offends the structure and provisions of Article II and Article III of the Texas Constitution, the rule should not be adopted.

Response: The department disagrees with this comment. Texas Transportation Code, §708.155 provides that the department may contract with a private vendor *for the provision of services* for the collection of surcharges receivable and related costs. The department has construed this provision to permit the agency to contract with a vendor to perform all necessary tasks to ensure the efficient implementation of the Driver Responsibility Program, including sending notices, collecting fees and other related administrative functions. Furthermore, proposed §15.162(h) does not improperly delegate any administrative responsibilities of the department to the vendor. Employees of the department, not the vendor, actually enter the suspension information on the person's driver record.

Comment: §15.162(h) includes the term, "Defaults on the installment agreement" however, that term is not defined. Is the decision to declare someone in default the department's or the vendor's? If so, the vendor has a conflict of interest. May the vendor bargain with the individual to require more frequent payments and thus increase its overall interest rate in the form of "partial payment fees?" This sort of conflict of interest will lead to unequal application of the law based on factors that the Legislature neither contemplated nor desired. The rule should specifically define "Defaults on the installment agreement" and provide for a grace period for good cause so as to prevent the vendor from applying its own standards that may be unequal and self-interested.

Response: The department disagrees with this comment. Failure to provide a timely payment constitutes default on the installment agreement as described in proposed §15.162(h). The Surcharge Notice advises the person that payment must be received within thirty days from the date of the letter and further states the consequences for failure to provide a timely payment. As previously stated, the vendor does not have the authority to change the date for future payments. No further clarification is required.

Comment: §15.162(h) "individual will not be eligible to enter into another installment agreement." There is no statutory authority to prevent or limit the number of installment agreements that a person may enter into with the vendor. The Legislature intends individuals to be able to pay out the surcharge over time and it contravenes the intent of Chapter 708 to accelerate the entire balance of the surcharge for a single late payment. The Legislature clearly could have but did not authorize such action in the statute.

Response: The department disagrees with this comment. Texas Transportation Code, §708.153(b)(2) specifically authorizes the department to adopt a rule which declares the entire amount of the unpaid surcharge immediately due and payable if the person fails to make a required installment payment.

Comment: §15.162(h), statement that "The revocation will remain in effect until the surcharge and associated fees are paid in full" is beyond the statutory authority of the department because the statute does not authorize a revocation. Additionally, the revocation or suspension cannot be applied to the "associated fee(s) because this is essentially a collection action to benefit a private vendor. The state is not benefiting through the collection of the "associated fees."

Response: As previously stated, all references to the term "revocation" have been changed to "suspension" and all references to "associated fees" have been changed to "related costs." Texas Transportation Code, §708.152(b) provides that a license remains suspended until the person pays the amount of the surcharge and any related costs. As such, the department is within its statutory authority to adopt such a rule.

Comment: §15.162(i) insofar as it allows the vendor to continue to receive payments despite keeping a license revoked is not in the public interest. The rule does not explain or define when the driver's license must be restored. The rule appears to allow the department and its vendor to receive and enforce a contract without providing consideration to the individual making the payments. Because this rule is unfair to members of the public and only appears to benefit the vendor, it should be modified so as to provide as long as payments are made, the individual's license should not be suspended.

Response: The department disagrees with this comment. Proposed §15.162(i) *permits* the person to continue to make payments, but does not require such action on the part of the individual. Following a default, there is no longer an installment agreement between the parties and the person is not obligated to pay the partial payment fee. Further, the proposed rule specifically states that the license will remain revoked [suspended] until the specific surcharge has been paid in full.

Comment: §15.162(i) insofar as it contemplates revocation of all driving privileges is ultra vires. The department lacks statutory authority for this action. Chapter 708 only authorizes an automatic suspension. Because this clearly exceeds the statutory authority of the department, it should not be adopted.

Response: As previously stated, all references to the term "revocation" have been changed to "suspension."

Comment: §15.162(k) "partial payment fee" is not defined. The statute does not authorize the imposition of a partial payment fee. Therefore, the rules exceed the statutory authority of the agency and should be modified to exclude any partial payment fees.

Response: The department disagrees with this comment. As previously described, partial payment fees are optional service

fees associated with an installment agreement. Texas Transportation Code, §708.155 provides that the total amount of compensation received by the vendor may not exceed 30% of the amount of the surcharge and related costs collected. The current contract provides that the vendor will be compensated in an amount equal to 4% of the surcharge assessed. If a person subject to a surcharge requirement elects to pay the surcharge in installments, the contract permits the vendor to charge an additional $2.50 installment payment fee per payment. As such, the department is within its statutory authority to adopt such a rule.

Comment: §15.162(j) is flawed because it does not clarify whether individuals who received a single reference number for more than one surcharge may direct their surcharge payments to be divided up between the assessed surcharges.

Response: The department disagrees with this comment. According to current business practices, each surcharge requirement is identified by a unique reference number. This number is contained in the Surcharge Notice mailed to each individual subject to surcharge a requirement. Individuals who owe more than one surcharge requirement may establish an installment agreement for each surcharge owed. Proposed §15.162(j) merely establishes guidelines for how multiple surcharge requirements will be processed by the vendor.

Comment: §15.162(k) is vague and confusing because it is not clear whether the "total amount due" refers to the total amount due for an annual assessment or the total amount due for a projected three year period. It does not make sense to allow multiple small payments more often than once a month as this will result in individuals paying more in charges to the vendor than in payments directed towards principal amounts. Such a rule is not in the public interest.

Response: The department disagrees with this comment. The "total amount due" only refers to the assessment for the current year since the surcharge is not yet due for future years. Installment payments are only due once per month as provided in proposed §15.162(g). Further, proposed §15.162(l) provides that the balance may be paid in fewer payments, which allows the person to avoid additional partial payment fees.

Comment: The rules provide no mechanism for an individual to dispute a surcharge, cost or fee that has been assessed in error. Such a provision should be developed and proposed prior to the adoption of any rules regarding installment contracts.

Response: The department disagrees with this comment. As previously stated, the agency's standard business practice is to fully investigate any claim regarding a potential error, regardless of whether or not it pertains to a surcharge or fee associated with the Driver Responsibility Program. It is not necessary to create an administrative rule to further define the agency's error resolution process.

Comment: The rules provide no mechanism for an individual to dispute whether the department or its vendor properly sent notice. Such a provision should be developed and proposed prior to the adoption of any rules regarding installment contracts.

Response: The department disagrees with this comment. As previously stated, the agency's standard business practice is to fully investigate any claim regarding a potential error, regardless of whether or not it pertains to a surcharge or fee associated with the Driver Responsibility Program. It is not necessary to create an administrative rule to further define the agency's error resolution process.

Comment: The rules do not make clear how individual's protected and confidential criminal history information has been protected from disclosure to the vendor and/or the general public. For example, what restrictions exist on the ability of the vendor to use information gained from individuals for pecuniary gain. May the vendor develop a database of information that it can resell to other information brokers based upon information provided in the course of entering installment agreement and making payment collections.

Response: The department disagrees with this comment. The purpose of the proposed rules is to provide general information to the public regarding the use of a vendor and the acceptance of installment agreements. This comment pertains to matters addressed in the contract between the department and the vendor and is outside the scope of the proposed rules.

Comment: The rules do not explain whether the vendor may disclose information about an individual's surcharge to another person to allow the other person to make a payment on behalf of an individual. May another person make a payment on behalf of someone who has received a surcharge and if so, to what information about the underlying reason for the surcharge is the person entitled. Considering that the significant privacy interests may be implicated for large numbers of the population, the rules should address this issue.

Response: The department disagrees that the proposed rules should address this situation. A person may make a payment on behalf of another person. However, the person making the payment must provide the vendor with the appropriate information in order for the vendor to credit the payment to the correct surcharge. The vendor does not provide any information to third parties to facilitate the payment.

Comment: The rules do not explain the nature of the Driver Responsibility Program surcharge. Are the surcharges considered criminal fines, civil fines, taxes, or criminal penalties or punishment. The department's interpretation may determine the extent to which a variance exists between the enforcement of the statute for particular individuals, especially debtors, and an inconsistency with federal law, such as order of a United Stated Federal Bankruptcy Court.

Response: The department disagrees that the proposed rules should address this issue. The purpose of the proposed rules is to provide general information to the public regarding the use of a vendor and the acceptance of installment agreements. This comment addresses issues which are outside the scope of the proposed rules.

Comment: The department's statutory authority to use a vendor is limited to the collection of "surcharges receivable." The rules as proposed contemplate the use of a vendor to provide notice, assess the surcharge, monitor compliance payments, initiate installment agreements, and declare defaults. The department lacks the statutory authority to use a vendor as contemplated in the proposed rules. The rules should be rewritten to limit the ability of the vendor to collect delinquent surcharges.

Response: The department disagrees with this comment. Texas Transportation Code, §708.155 provides that the department may contract with a private vendor *for the provision of services* for the collection of surcharges receivable and related costs. The department has construed this provision to permit the agency to contract with a vendor to perform all necessary tasks to ensure the efficient implementation of the Driver Responsibility Program, including sending notices, collecting fees and other

related functions. As such, the department is within its statutory authority to adopt the rule as written.

Comment: It does not appear that the proposed rules provide for proper and effective notice which is a prerequisite to collecting payment. For example, commingling credit card fees, processing fees, related fees, contract fees, partial payment fees, and other "fees" into a single amount asserted to be the surcharge amount implies to the individuals receiving the notice that the entire amount is owed to the State of Texas as an assessed surcharge. The rules should provide for a clear and unambiguous notice of the assessment of the surcharge amount which consists of only the statutorily authorized figure as set on in the offense categories contained in Chapter 708.

Response: The department disagrees with this comment. The proposed rules are designed to provide basic information to the public pertaining to the Driver Responsibility Program and installment agreements. The Surcharge Notice mailed to every individual subject to a surcharge requirement provides specific information regarding the total amount due, which includes the statutory surcharge assessment and the vendor's fee. In addition, the correspondence provides general information regarding optional service fees such as credit card fees, check by phone services and partial payment fees. A person is not obligated to pay the respective optional service fee unless an optional service is utilized.

Comment: The rules fail to provide for the vendor to utilize creditor cards for payments. If the department intends to allow individuals to make payments with credit cards or to establish an installment agreement through the use of a credit card, the department's current rules are not effective.

Response: The department disagrees with this comment. The proposed rules were not intended to address the various methods of payment. The Surcharge Notice mailed to every individual subject to a surcharge requirement provides specific information on how to contact the vendor to facilitate payment by credit card.

Comment: The rules are fundamentally flawed in that they fail to protect members of the public from the fundamental conflict of interest created by having a for-profit vendor notify and collect the surcharges instead of the Department of Public Safety which is a governmental agency and is not a profit-making entity. The rules should clearly inform individuals of their rights and limit the discretion of the vendor or should provide an alternative to the individuals having to utilize a for profit vendor.

Response: The department disagrees with this comment. Texas Transportation Code, §708.155 provides that the department may contract with a private vendor *for the provision of services* for the collection of surcharges receivable and related costs. As such, the proposed rules are within the department's statutory authority to adopt. The department does not intend to establish an alternate mechanism for notification and collection processes related to the Driver Responsibility Program.

Comment: In order to understand fully the nature of the installment rules as proposed, the department should make available by publication in the *Texas Register* or on the department's website, the contract between it and its vendor along with any amendments or modifications that have been made to the contract and other binding agreements between it and the vendor. Because the vendor's conduct towards member of the public will be governed in such an agreement, it is impossible to fully analyze the extent to which these rules may or may not conflict with the written agreement between the Department of Public Safety and its vendor and/or any other vendors or subcontractors utilized.

Response: The department disagrees with this comment. The department has complied with all statutory requirements with regard to this rulemaking process. A person interested in reviewing specific documentation related to the implementation of the Driver Responsibility Program may make an official request for information in accordance with state law and agency policy.

Comment: Proposed §15.162(k)(3) and (4) authorize installment agreements which extend beyond the time period authorized by the governing statute.

Response: Based on this comment, the department has corrected this oversight by amending proposed §15.162(k)(3) and (4) to reflect the specific amounts and time periods referenced in Texas Transportation Code, §708.153(b).

Comment: The proposed rules do not address how the department will determine an alcohol concentration of 0.16 or greater in order to assess a higher surcharge or how the department will assess the surcharge on an individual who receives a second/subsequent DWI before the first offense is adjudicated.

Response: The department disagrees that the proposed rules should address this issue as they do not concern the mechanism by which the department actually assesses the surcharge. The rules are limited in scope and are designed to advise the public regarding the use of a vendor and installment agreements. As previously indicated, the department has a business process by which a person subject to a surcharge requirement may verify the accuracy of the information contained on the driver history. It is not necessary to create an administrative rule to further define the agency's error resolution process.

Comment: The proposed rules do not clarify when the assessment is made or if the assessment is made by the vendor or the department. Further, the rules do not specify how the department intends to differentiate between those individuals who received surcharges during the backlog period.

Response: The department disagrees that the proposed rules should address this issue as they do not concern the mechanism by which the department actually assesses the surcharge. The Surcharge Notification mailed to every individual subject to a surcharge requirement provides information regarding when the department will assess a surcharge and describes the point system and intoxication offense surcharges. The proposed rules apply to all individuals, regardless of whether or not the surcharges were assessed during the backlog period.

Comment: The proposed rule is unclear as to whether the installment agreement is between the department and the person or the vendor and the person.

Response: The department disagrees with this comment. The vendor serves as an agent of the department. Proposed §15.162(a) provides that the department, through the vendor, will accept installment payments.

Comment: The rule does not address what safeguards are in place with respect to fair debt collections and how an individual may report a complaint against the vendor.

Response: The department disagrees that the proposed rules should address this issue. As previously stated, the agency's standard business practice is to fully investigate any claim regarding a potential error, regardless of whether or not it pertains

to a surcharge or fee associated with the Driver Responsibility Program. Likewise, the department would fully investigate any complaint against the vendor. It is not necessary to create an administrative rule to further define this process.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §708.002 and §708.153.

§15.161. General Information.

(a) The department has contracted with a vendor to process payments under the Driver Responsibility Program. The vendor will produce and send all surcharge notices, accept all payments and report all transactions to the department.

(b) All payments must be submitted to the vendor. The department will not accept payments for surcharges under the Driver Responsibility Program at Department of Public Safety (DPS) facilities.

(c) An individual who fails to pay the surcharge, including any related costs or fails to enter an installment agreement within 30 days from the date of the Surcharge Notice will be subject to suspension action.

§15.162. Installment Agreements.

(a) The department, through the vendor, will accept installment payments for surcharges required under the Driver Responsibility Program.

(b) There is an additional processing fee required per each payment submitted in accordance with an installment agreement. The fee is set by the department and is provided on all original notifications.

(c) To enter into an installment agreement, the individual must submit the minimum amount due. The vendor's acceptance of the minimum amount due constitutes an installment agreement. The individual is not required to provide written declaration of the installment agreement.

(d) To prevent suspension, the minimum amount due must be received within 30 days of the original Surcharge Notification.

(e) If a suspension action has occurred, an individual who has not submitted any partial payments can enter into an installment agreement to lift the suspension.

(f) The driver license and/or driving privileges of an individual who submits less than the minimum payment needed to establish an installment agreement will be suspended. This individual will not be eligible to enter into an installment agreement for that specific surcharge requirement. The suspension will remain in effect until the surcharge and related costs are paid in full.

(g) Subsequent payments are due each month on the same date as the date of the Surcharge Notification for that particular surcharge.

(1) If the installment payment is due on the 29th, 30th or 31st, payments are due on next business day in months that do not have those dates.

(2) Payment due dates return to the same date as the Notification for following months that have the corresponding date.

(h) If an individual fails to provide a timely payment and defaults on the installment agreement, the license and/or driving privileges will be suspended. The individual will not be eligible to enter into another installment agreement for that specific surcharge requirement. The suspension will remain in effect until the surcharge and related costs are paid in full.

(i) If suspended, an individual may continue to make partial payments; however, the license will remain suspended until the specific surcharge has been paid in full.

(j) To submit an installment payment, the individual must include the full name, driver license/identification number and the surcharge reference number with all payments.

(1) If an individual has multiple surcharge notifications and does not provide the reference number, the payment will be applied to the oldest outstanding surcharge requirement.

(2) If the individual submits a payment and provides a reference number, the payment will be applied as requested even if this results in a default or suspension on another surcharge owed by the same individual.

(k) Minimum payments are determined by dividing the total amount due by the maximum payments allowed and adding the partial payment fee. The maximum number of payments is determined by the amount of the surcharge required.

(1) For surcharge requirements of $100 - $259 an individual may make a maximum of four (4) payments.

(2) For surcharge requirements of $260 - $999 an individual may make a maximum of ten (10) payments.

(3) For surcharge requirements of $1000 - $2300 an individual may make a maximum of twelve (12) payments.

(4) For surcharge requirements of $2301 and over an individual may make a maximum of twenty-four (24) payments.

(l) An individual may pay the balance in fewer payments, but a payment of less than the minimum required will result in the suspension of the license and/or driving privileges.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2005.

TRD-200501648
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: May 10, 2005
Proposal publication date: November 12, 2004
For further information, please call: (512) 424-2135

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to Tex. Gov't Code §2001.039, the Employees Retirement System of Texas files this notice of intent to review the rules contained in Chapter 74 (Qualified Domestic Relations Orders).

Chapter 74 - Qualified Domestic Relations Orders

§74.1 Purpose

§74.3 Definitions

§74.5 Antialienation

§74.7 Requirements

§74.9 Determination

§74.11 Alternate Payments

Pursuant to Tex. Gov't Code §2001.039, the Employees Retirement System of Texas files this notice of intent to review the rules contained in Chapter 81 (Insurance).

Chapter 81 - Insurance

§81.1 Definitions

§81.3 Administration

§81.5 Eligibility

§81.7 Enrollment and Participation

§81.9 Grievance Procedure

§81.11 Termination of Coverage

Comments relating to whether these rules should be repealed, readopted or amended must be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or emailed to pjones@ers.state.tx.us, by 10:00 a.m. on Monday, June 6, 2005.

TRD-200501691
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: April 25, 2005

♦ ♦ ♦

Adopted Rule Reviews

Office of the Governor

Title 1, Part 1

The Office of the Governor has completed its review of Chapter 3 concerning the Criminal Justice Division and Chapter 5 concerning Budget and Planning, in accordance with the requirements of §2001.039 of the Texas Government Code. Notice of the review was published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1321). No comments were received regarding the review of Chapter 3 and Chapter 5.

As a result of the rule review, the Office of the Governor has identified certain revisions that need to be made to the rules in Chapter 5. Section 5.148 and §5.167 need to be revised to reflect that the "Uniform Grant and Management Standards" or "UGMS" is no longer known as the "Uniform Grant and Contract Management Standards" or "UGCMS". The Office of the Governor will propose amendments to these rules at a later date to address this issue.

In separate rulemaking, the Office of the Governor has proposed amendments to: (1) Chapter 3 §3.203 concerning project requirements for the Juvenile Justice and Delinquency Prevention Act Fund and §3.1205 concerning eligible applicants for the Juvenile Accountability Block Grant Program, published for comment in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1551); and (2) Chapter 5 §5.195 concerning the Texas Review and Comment System, published for comment in the January 21, 2005, issue of the *Texas Register* (30 TexReg 173).

Subject to the proposed amendments to Chapter 3 §3.203 and §3.1205, and Chapter 5 §5.195, the Office of the Governor finds that the reasons for the adoption of the rules in Title 1, Part 1, Chapter 3 and Chapter 5, continue to exist, and readopts Chapter 3 and Chapter 5 pursuant to the requirements of §2001.039 of the Texas Government Code.

This concludes the review of Chapter 3 relating to the Criminal Justice Division and Chapter 5 relating to Budget and Planning.

TRD-200501644
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: April 20, 2005

♦ ♦ ♦

Texas Parks and Wildlife Department

Title 31, Part 2

The Texas Parks and Wildlife Commission adopts the rules review of the following subchapters within Chapter 59, Parks, as published in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9211). As a result of the review, the commission readopted the contents of the following subchapters.

No comments were received concerning readoption of the rules.

Chapter 59. Parks

Subchapter A. Park Entrance and Park User Fees

§59.1. General Statement.

§59.2. Park Entrance and Use Fees.

§59.3. Activity and Facility Use Fees.

§59.4. Reservation of State Park Facilities.

Subchapter B. Local Park Planning Assistance

§59.10. Eligibility.

§59.11. Limitations.

§59.12. Application for Assistance.

Subchapter C. Acquisition and Development of Historic Sites, Buildings and Structures

§59.41. General Statement.

§59.42. Chronology and Thematic Organization.

§59.43. Acquisition Guidelines.

§59.44. Development Guidelines.

§59.45. Methods of Additional Funding Other Than Departmental.

§59.46. Maintenance Guidelines.

§59.47. Personnel Selection and Training Guidelines.

Subchapter D. Administration of the State Park System

§59.61. General Objectives.

§59.62. Parks and Wildlife Land Classification-Policy.

§59.63. Definitions.

§59.64. Classification and Guidelines.

§59.75. Coastal Management Program.

Subchapter E. Operation and Leasing of Park Concessions

§59.101. Definitions.

§59.102. General Requirements for Park Concessions.

§59.103. Selection of a Concessioner.

§59.104. Types of Concession Contracts.

§59.105. Contract Terms.

§59.106. Franchise Fee Rates and Charges.

§59.107. Accounting.

§59.108. Bond and Insurance.

§59.109. Furnishing Utilities.

Subchapter F. State Park Operational Rules

§59.131. Definitions.

§59.132. General Rules.

§59.133. Closing Hours and Overnight Use.

§59.134. Rules of Conduct in Parks.

§59.135. Vehicles, Trailers, Motor Homes, Camping Equipment, or Personal Belongings.

§59.136. Penalties.

Subchapter G. Relocation Assistance in Park Acquisition Projects

§59.191. Definitions.

§59.192. Purpose.

§59.193. Procedures.

Subchapter H. Sea Rim State Park Hunting, Fishing, and Trapping Proclamation

§59.201. Application.

§59.202. Authority.

§59.203. Finding of Fact.

§59.204. Consent.

§59.205. Definitions.

§59.206. Means and Methods: Migratory Birds.

§59.207. Means and Methods: Fur-Bearing Animals.

§59.208. Hunting from Vehicle.

§59.209. Hunting Permits.

§59.210. Checking Game.

§59.211. Open Seasons and Bag Limits: Migratory Birds.

§59.212. Open Seasons and Bag Limits: Fur-Bearing Animals.

§59.213. Fish: Means and Methods; Open Seasons; Bag and Size Limits.

§59.214. General.

§59.215. Effective Date.

This review is pursuant to the Texas Government Code, §2001.039.

TRD-200501694
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: April 25, 2005

♦ ♦ ♦

The Texas Parks and Wildlife Commission adopts the rules review of the following subchapters within Chapter 69, Resource Protection, as published in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9212). As a result of the review, the commission readopts the contents of the following subchapters.

No comments were received concerning readoption of the rules.

Chapter 69. Resource Protection

Subchapter A. Endangered, Threatened, and Protected Native Plants

§69.1. Permit Required.

§69.2. Scientific Plant Permit.

§69.3. Reporting Requirements.

§69.4. Renewal.

§69.5. Commercial Plant Permit.

§69.6. Permit and Tag Fees.

§69.7. Period of Validity.

§69.8. Endangered and Threatened Plants.

§69.9. Penalties.

§69.407. Disposition of Stock.

§69.408. Violations and Penalties.

This review is pursuant to the Texas Government Code, §2001.039.

TRD-200501695

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: April 25, 2005

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §97.1004(b)

Section II: System Overview

Under the accountability provisions in the *No Child Left Behind Act of 2001* (NCLB), all districts, campuses, and the state are evaluated for Adequate Yearly Progress (AYP). Following is an overview of the process for determining district and campus 2004 AYP Status.

Key Dates Related to the 2004 AYP Process

April 1, 2004	**AYP Proposal Submitted** Proposed changes to the 2004 calculation of Adequate Yearly Progress for Texas submitted by the Commissioner of Education to the United States Department of Education (USDE).
July 29, 2004	**AYP Plan Approved** USDE approved the Texas Consolidated State Application Accountability Workbook (Texas AYP Plan) for 2004.
August 13, 2004	**School Improvement Notification** Districts and campuses that were in Title I School Improvement in 2003-04, and those that missed 2003 AYP and could be subject to Title I School Improvement if they miss 2004 AYP for the same measure, were notified and provided guidance.
September 2004	**AYP Guide Released** The Texas Education Agency (TEA) posts sections of the 2004 AYP Guide as they become available.
	Release of 2004 Confidential Preliminary Unmasked Data Tables (without AYP Status Labels) for Campuses Facing Title I School Improvement Requirements TEA transmits 2004 confidential preliminary unmasked data tables for campuses that will be subject to Title I School Improvement based on their preliminary 2004 AYP results.

October 2004

Accountability Secure Website
Districts receive instructions for requesting access to a Texas Education Agency Secure Environment (TEASE) that will be used to transmit AYP confidential preliminary data tables and confidential student listings.

November 15, 2004

Release of 2004 Confidential Preliminary Unmasked Data Tables (without AYP Status Labels) to All Other Campuses and Districts
TEA provides 2004 AYP confidential preliminary unmasked data tables to school districts on TEASE for Title I and non-Title I districts and campuses, alternative education campuses, and open-enrollment charter schools.

Information available on November 15 will include:

- Reasons the campus missed AYP for each of the 29 measures,
- Student listings (including downloadable data files), and
- Templates to streamline documentation requirements for the most common types of appeals.

Appeals Begin
Student-level data for submission of appeals are available to districts electronically. Appeal letters for district and campus AYP data are accepted.

December 17, 2004

Appeals Deadline
Appeals of district and campus preliminary 2004 AYP Status must be submitted in writing under the signature of the superintendent by Friday, December 17, 2004.

February 23, 2005

2004 AYP Status to School Districts
2004 AYP masked data tables with final AYP Status designations provided to districts on TEASE.

TABLES AND GRAPHICS May 6, 2005 30 TexReg 2699

February 24, 2005 **Final 2004 AYP Status**
12:00 noon release
TEA releases final 2004 AYP masked data tables with final AYP Status electronically on public website.

Unmasked data tables will be provided on TEASE to campuses and districts to allow them to appeal before final AYP Status is determined. Final 2004 AYP Status will be released to districts and campuses on the internet. On the release date, the individual district and campus reports, a listing of 2004 AYP Status for all districts and campuses, and summary information for the state will be posted to the AYP web page at 12:00 noon. A sample AYP data table is in *Appendix C*.

New Features of the 2004 AYP System

The USDE approved changes to specific components of the AYP system for 2004. In addition, TEA incorporated refinements to the AYP system to provide a more comprehensive evaluation of district and campus performance. This overview and Section III provide more details for each of the following areas:

- Inclusion of additional assessments in the evaluation,
- Use of results from Locally-Determined Alternate Assessments,
- Application of the Federal 1% cap and proficiency requirements,
- Grade 3 cumulative Reading results,
- Rounding of performance and participation calculations,
- Use of the State Accountability pairing relationship,
- Average Participation Rate,
- Expanded limited English proficient (LEP) student identification, and
- New AYP and Title I school improvement stage labels.

Districts and Campuses Evaluated

Districts

Regular foundation school program (FSP) districts and special statutory districts are evaluated for AYP. State-administered school districts are not evaluated for AYP. State-administered districts include Texas School for the Blind

and Visually Impaired, Texas School for the Deaf, Texas Youth Commission, and Windham School District. Open-enrollment charter schools are evaluated as campuses for AYP in 2004; however, there will be no evaluation for charter districts. Districts with no students enrolled in Grades 3–8 and 10 are not evaluated for AYP in 2004.

Campuses

All Title I and non-Title I public school campuses, alternative education campuses, and open-enrollment charter schools are evaluated for AYP with the following exceptions:

New Campuses: New campuses and new open-enrollment charter schools are not evaluated for AYP the first year they report fall enrollment. These campuses will be incorporated automatically the second year they report fall enrollment.

Campuses that Close Mid-Year: Campuses that close before the Texas Assessment of Knowledge and Skills (TAKS) testing date are not evaluated for AYP. Performance measures for which data exist on campuses that close are included in the district AYP evaluation. Campuses that close after the end of the school year are evaluated for AYP for that school year.

Juvenile Justice Alternative Education Program (JJAEP) and Disciplinary Alternative Education Program (DAEP) Campuses: State statute and statutory intent prohibit the attribution of student performance results to JJAEPs and DAEPs. Attendance and performance data for students served in JJAEPs and DAEPs are attributed back to the home campuses.

PK/K Campuses: Campuses that do not serve students in grades higher than kindergarten are not evaluated for AYP.

Short-Term Campuses: Campuses that serve students in the grades evaluated for AYP (Grades 3–8 and 10) but have no students in attendance for the full academic year, as defined on page 11, are not evaluated for AYP. This includes alternative education campuses (AECs) with short-term placements where students are not served for the full academic year at the AEC.

Charter Campuses with No Students in Grades 3–8 and 10: Open-enrollment charter schools that do not serve students enrolled in Grades 3–8 or 10 are not evaluated for AYP in 2004.

2004 AYP Status

Following is an overview of the 2004 AYP measures and standards. Additional information about each AYP measure is provided in *Section III.* A sample AYP calculation is provided in *Appendix D.*

Districts, campuses, and the state are required to meet standards on three measures for AYP: Reading/Language Arts, Mathematics, and one other measure. Table 1 summarizes the standards for these three measures. For Reading/Language Arts and Mathematics (Grades 3–8 and 10, summed across grades), for all students and each student group that meets minimum size requirements, districts and campuses must meet the performance standard or performance improvement, and the participation standard. The performance standard is based on test results for students enrolled for the full academic year. The participation standard is based on participation in the assessment program of all students enrolled on the day of testing.

In addition to Reading/Language Arts and Mathematics, districts and campuses are required to meet the AYP standard on one other measure—either Graduation Rate or Attendance Rate. The other measure evaluated for a district or campus is based on the grades offered. *Appendix E* shows the grade ranges included in each campus type.

- Graduation Rate is the other measure for high schools, combined elementary/secondary campuses offering Grade 12, and districts offering Grade 12.

- Attendance Rate is the other measure for elementary schools, middle/junior high schools, combined elementary/secondary schools not offering Grade 12, and districts not offering Grade 12.

Districts and campuses must meet the Graduation Rate or Attendance Rate standard ***or*** show any improvement from the prior year for all students.

Improvement on the other measure is also part of performance improvement for the Reading/Language Arts and Mathematics measures. If any student group (or all students) does not meet the performance standard for Reading/Language Arts or Mathematics, that student group must show both (1) a 10.0 percent decrease in the percent not meeting the student passing standard on TAKS from the prior year **and** (2) any improvement on the other measure. Although student groups are not required to meet the Graduation Rate or Attendance Rate standard, they *may* be required to show improvement on the Graduation Rate or Attendance Rate to meet the performance improvement standard.

A district or campus may be evaluated on as few as 2 or as many as 29 measures to determine 2004 AYP Status.

2004 AYP Status Labels

Each district and campus is assigned one of the following 2004 AYP Status labels:

Meets AYP: Designates a district or campus that meets all AYP standards on which it is evaluated.

Missed AYP – [reason]: Designates a district or campus that does not meet one or more AYP standards and which of those standards were not met.

***Not Evaluated*:** Designates a district or campus not evaluated for AYP for one of the following reasons:

- the campus is new;
- the campus does not serve students in grades above kindergarten;
- the campus closed mid-year;
- the campus does not have students in attendance for the full academic year;
- Juvenile Justice Alternative Education Program (JJAEP) and Disciplinary Alternative Education Program (DAEP) campuses;
- unusual circumstances (district with no students in grades tested; campus test answer documents lost in mail);
- charter district; or
- the charter campus does not have students enrolled in the grades tested.

Also this year, the 2004 State Accountability Ratings (see the 2004 State Accountability Manual on the Internet at http://www.tea.state.tx.us/perfreport/account/2004/manual/index.html for definitions of the ratings) for each campus and district will be reported along with the final 2004 AYP Status. The status label on each campus and district AYP report will be one of the following combinations of State Rating and AYP Status:

- *Exemplary, Meets AYP*
- *Exemplary, Missed AYP – [reason]*
- *Recognized, Meets AYP*
- *Recognized, Missed AYP – [reason]*
- *Academically Acceptable, Meets AYP*
- *Academically Acceptable, Missed AYP – [reason]*
- *Academically Unacceptable, Meets AYP*

- *Academically Unacceptable, Missed AYP – [reason]*
- *Not Rated, Meets AYP*
- *Not Rated, Missed AYP – [reason]*
- *Not Rated, Not Evaluated*

Table 1: 2004 AYP Measures and Standards

Reading/Language Arts 2003–04 tests (TAKS, SDAA, LDAA, and RPTE in Grades 3–8 & 10) All students and each student group that meets minimum size requirements: African American Hispanic White Economically Disadvantaged Special Education Limited English Proficient	***Performance Standard: 47%*** % counted as proficient on test* for students enrolled the full academic year subject to the Federal 1% cap	***OR***	***Performance Improvement:*** 10% decrease in percent not proficient on test* ***and*** any improvement on the other measure (Graduation Rate or Attendance Rate)
	Participation Standard: 95% Participation in the assessment program for students enrolled on the date of testing (no more than 5% of students absent)	***OR***	***Average Participation Rate:*** 95% participation based on combined 2002-03 and 2003-04 assessment data
Mathematics 2003–04 tests (TAKS, SDAA, and LDAA in Grades 3–8 & 10) All students and each student group that meets minimum size requirements (see above)	***Performance Standard: 33%*** % counted as proficient on test* for students enrolled the full academic year subject to the Federal 1% cap	***OR***	***Performance Improvement:*** 10% decrease in percent not proficient on test* ***and*** any improvement on the other measure (Graduation Rate or Attendance Rate)
	Participation Standard: 95% Participation in the assessment program for students enrolled on the date of testing (no more than 5% of students absent)	***OR***	***Average Participation Rate:*** 95% participation based on combined 2002-03 and 2003-04 assessment data
Other Measures** All students **Graduation Rate** Class of 2003 **Attendance Rate** 2002–03	***Graduation Rate Standard: 70.0%*** ***or any improvement*** Graduation Rate for high schools, combined elementary/secondary schools offering Grade 12, & districts offering Grade 12		***Attendance Rate Standard: 90.0%*** ***or any improvement*** Attendance Rate for elementary schools, middle/junior high schools, combined elementary/secondary schools not offering Grade 12, & districts not offering Grade 12

* No more than 1% of students in a district can be counted as proficient based on meeting ARD expectations on 1) SDAA for students tested below enrolled grade level, or 2) LDAA. Results for the RPTE are counted based on number of years in U.S. schools.

** Student groups are not required to meet the Graduation Rate or Attendance Rate standards; however, they may be required to show improvement on the Graduation Rate or Attendance Rate as part of performance improvement for Reading/Language Arts or Mathematics.

Section III: Adequate Yearly Progress (AYP)

This section of details how the 2004 AYP measures will be calculated for districts and campuses in Texas. The following is a description of each of these measures and how they incorporate aspects of AYP calculations that have changed for 2004.

Measures

Reading/Language Arts and Mathematics

Districts and campuses must meet the performance standard or performance improvement, plus participation requirements for Reading/Language Arts and Mathematics.

Performance

TAKS

Assessment results evaluated are Reading/Language Arts and Mathematics performance on the Texas Assessment of Knowledge and Skills (TAKS). This includes TAKS results for both the English and Spanish versions of the test for students enrolled in Grades 3–8 and 10 for the full academic year. Student performance at the *Met Standard* level adopted by the State Board of Education (SBOE) for the 2003–04 school year is evaluated. Results are evaluated for all students and each student group meeting minimum size requirements.

Grade 3 Reading

Current federal regulations implementing *No Child Left Behind* (NCLB) permit performance on the second administration of the TAKS Grade 3 Reading test to be included in the AYP calculation. Grade 3 Reading performance is the cumulative percent passing calculated by combining the March and April administrations of the TAKS.

SDAA and LDAA

Assessment results on the State-Developed Alternative Assessment (SDAA) and Locally-Determined Alternate Assessments (LDAA) for students with disabilities are also included in 2004 AYP calculations.

- Results for students tested on the SDAA *at enrolled grade level* are evaluated; students who meet Admission, Dismissal, and Review (ARD) committee expectations are counted as proficient.

- Results for students tested on SDAA *below enrolled grade level* are evaluated. Students who meet ARD expectations are counted as proficient, subject to the Federal 1% cap (see below).
- Results for all SDAA baseline tests with no ARD expectations are included and counted as not proficient for AYP purposes.
- Results for LDAA were reported to TEA in 2004. Students who meet ARD expectations are counted as proficient, subject to the Federal 1% cap.

Federal 1% Cap on SDAA (Tested Below Enrolled Grade Level) and LDAA Results Counted as Proficient: For 2004 AYP, the USDE has ruled that students counted as proficient for the performance calculation who either meet ARD expectations on the SDAA and were tested below enrolled grade level or meet ARD expectations on the LDAA may together comprise only 1% of the total students within each district. The total students within each district can be found on the participation section (Total Students in All Students column; see Appendix C) of the district AYP data table. TEA will process SDAA and LDAA results by determining first how many proficient scores can be included in the performance rates for each district. Proficient scores will be included based on the priorities shown below. Proficient scores that remain after the district cap is reached will be counted as non-proficient *for AYP determination purposes only.*

Prioritization of which SDAA and LDAA results to count as proficient within the district will be based on the state goal to provide a more challenging curriculum to students with disabilities at all levels. To encourage and reward campuses and districts for meeting this goal, the students tested closest to grade level and performing at the highest level will have first priority. Proficient scores will be counted under the 1% cap in the following priority:

- Students who were enrolled the full academic year in the same campus
  - SDAA tested one grade below enrolled grade level by percent of correct answers
  - SDAA tested two grades below enrolled grade level by percent of correct answers
  - And so on for SDAA tested three grades below enrolled grade level, etc.
  - LDAA Texas Essential Knowledge and Skills (TEKS)-based test
  - LDAA functional test
- Students who were enrolled the full academic year in the same district but not the same campus
  - SDAA tested one grade below enrolled grade level by percent of correct answers
  - SDAA tested two grades below enrolled grade level by percent of correct answers
  - And so on for SDAA tested three grades below enrolled grade level, etc.
  - LDAA TEKS-based test
  - LDAA functional test

- Students who were not enrolled in the same district for the full academic year

Federal regulations (34 CFR 200.13 *et seq.*) require TEA to apply the 1% cap to districts and specifically direct state agencies not to apply the 1% cap to individual campuses. However, it should be noted that these regulations require students counted as "artificial failures" under the 1% cap rule at the district-level AYP to also be counted as "artificial failures" for campus-level AYP. These regulations are intended to prevent schools with higher disabled student populations from being disproportionately penalized by the cap while also maintaining consistency between campus and district AYP with respect to how disabled students are counted.

It should be emphasized that the 1% cap relates to counting students as proficient for AYP purposes only and ***does not*** provide direction to ARD committees regarding how students with disabilities should be assessed. For students with disabilities receiving special education services, state policies and procedures related to assessment decision-making are detailed in the [TEA] publication titled *Admission, Review, and Dismissal (ARD) Committee Decision-making Process for the Texas Assessment Program.* **It is critically important that local school districts follow the state policies and procedures to ensure that appropriate assessments are selected and administered to students with disabilities.**

RPTE

Assessment results for the Reading Proficiency Tests in English (RPTE) are included in the performance measure calculation for students who have been in U.S. schools longer than one year but were exempted from the TAKS Reading/Language Arts test by the Language Proficiency Assessment Committee (LPAC). RPTE results are not evaluated for students tested on TAKS, SDAA, or LDAA. RPTE results included in the calculation are then evaluated based on the number of years the student has been in U.S. schools. Results for students in their first year in U.S. schools are not included in the performance measure calculation. For students in their second year in U.S. schools, baseline testers who score *Intermediate* or *Advanced* or previous testers who score at least one level higher than the previous year are counted as proficient. For students in their third year or more in U.S. schools, only students scoring *Advanced* will be counted as proficient.

LEP Mathematics

Districts were provided instructions for testing on TAKS released Mathematics test with appropriate linguistic accommodations limited English proficient (LEP) students who were exempted from the TAKS Mathematics test by the LPAC. For LEP-exempt students who have been in U.S. schools longer than one year and tested in Mathematics on a released TAKS test, their results are automatically counted as not proficient (regardless of actual performance) and included

in the performance calculations *for AYP purposes only*. LEP-exempt students who have been U.S. schools for one year or less are exempt from the AYP calculations and are not included in the performance measure.

Calculating Performance Measures
The Reading/Language Arts and Mathematics performance measures are the percent of students counted as proficient. The measure is calculated as the number of students counted as proficient (as described above for each test) divided by the total number of students tested, by subject. All calculations are rounded to the nearest whole percent.

Full Academic Year
Only students enrolled in the district or on the campus for the full academic year are included in the performance measure.

Districts: Results for students enrolled in the district on the Public Education Information Management System (PEIMS) fall enrollment snapshot date are included in the district-level measure. The snapshot date for 2003–04 was October 31, 2003.

Campuses: Results for students enrolled on the campus on the PEIMS fall enrollment snapshot date are included in the campus-level measure.

Student Groups Evaluated
In addition to all students, the student groups evaluated for AYP are African American, Hispanic, White, economically disadvantaged, special education, and LEP. Student information coded on the test answer documents is used to assign students to groups. Student groups are reported as a percentage of all students, rounded to the nearest whole percent.

Special Education: If a student is tested on the SDAA or LDAA for either Reading/Language Arts or Mathematics, the student is included in the special education group for both subjects.

LEP: If a student is identified as a LEP student on the TAKS English, TAKS Spanish, or SDAA tests for either subject, the student is included in the LEP group for both subjects. If the student is tested on the RPTE, the student is included in the LEP student group for both subjects. If the LEP field is blank on the TAKS English, TAKS Spanish, or SDAA answer documents, the student is assumed to be non-LEP.

In addition, students remain in the LEP student group for two years after they enter a regular, all-English instructional program and are no longer identified as LEP on the answer document. For all students who have 2003-04 TAKS results

TABLES AND GRAPHICS May 6, 2005 30 TexReg 2709

that are included in the AYP Reading/Language Arts and Mathematics performance measures for 2004, performance is included in the LEP student group if a test answer document for 2003-04 is coded as LEP, or for either of the prior two years (2001-02 and 2002-03) the student was identified as LEP (PEIMS fall enrollment) or having attended a bilingual or English as a second language (ESL) program for any six-week period.

Minimum Size Requirements: For student groups to be included in the AYP performance calculation, a district or campus must have:

- Test results for 50 or more students in the student group (summed across Grades 3–8 and 10) for the subject, and the student group must comprise at least 10 percent of all test takers in the subject, ***or***
- Test results for 200 or more students in the student group, even if that group represents less than 10 percent of all test takers in the subject.

For the LEP student group, minimum size is evaluated based on students identified as LEP in 2003–04 only. If the LEP student group meets the minimum size requirement based on current-year identification, the performance evaluated will include additional students who were identified as LEP in the prior two years as described above.

Performance Standards

For each district and campus, all students and each student group meeting the minimum size requirement for students enrolled the full academic year must meet the following performance standards for Reading/Language Arts and Mathematics.

- Reading/Language Arts: **47** percent of students counted as proficient
- Mathematics: **33** percent of students counted as proficient

Performance Improvement (a.k.a. "Safe Harbor")

For Reading/Language Arts and Mathematics, all students and each student group must meet *either* the performance standard *or* performance improvement. For student groups that meet the performance standard, it is not necessary for these groups to also meet performance improvement. For this reason, performance improvement is considered a "safe harbor" for student groups (or all students) that do not meet the performance standard. The safe harbor requires that student groups (or all students) show gains on the measures on which they do not meet the standard (Reading/Language Arts or Mathematics) *and* improvement on the other measure applicable for their district, campus, or student group.

Calculating Performance Improvement: Performance improvement for the student group (or all students) is met if there is:

- a 10 percent decrease from the prior year in percentage of students counted as not proficient in the subject (Reading/Language Arts or Mathematics), ***and***
- at least one-tenth of a percent (0.1) improvement for the group on the Graduation Rate or Attendance Rate.

The performance improvement calculation requires that the actual change must be equal to or greater than the minimum Required Improvement needed to reach a standard of 100 percent over a ten-year period. In this case, the methodology may be illustrated as:

$$\textit{Actual Change} \geq \textit{AYP Required Improvement}$$

$$[\text{performance in 2004}] - [\text{performance in 2003}] \geq \frac{[\text{standard of 100 \%}] - [\text{performance in 2003}]}{10}$$

Minimum Size Requirements: Performance improvement is calculated even if the student group does not meet the minimum size requirement the prior year. Performance improvement is not calculated if there are no prior-year test results for the student group (or all students). If performance improvement cannot be calculated due to no prior-year results, the campus or district cannot use safe harbor to meet the performance requirement and receives an AYP status of *Missed AYP* for that measure.

Improvement on the Graduation Rate or Attendance Rate is calculated at the student group level for the purpose of applying performance improvement only. If the student group (or all students) does not meet the minimum size requirement for the Graduation Rate or Attendance Rate for both the current year and the prior year, improvement for the other measure is not evaluated. In this situation, the district or campus is not required to show improvement on the other measure to meet performance improvement for the student group. If the student group meets the minimum size requirements for both the current year and prior year, an improvement of at least 0.1 in the Graduation Rate or Attendance Rate is required.

Participation

In addition to meeting performance standards for Reading/Language Arts and Mathematics, districts and campuses must meet a test participation standard.

Calculating Participation Rate

Districts are required to submit test answer documents for every student enrolled in the grades tested on the test date. Students who were administered a make-up test within the testing window are included in the participation rate calculation. The answer documents are coded to show which test is administered to each student and whether the test is scored for the following tests:

- TAKS;
- SDAA for special education students;
- LDAA for special education students exempted from the TAKS and SDAA by the ARD committee; or
- RPTE and released TAKS Mathematics tests with linguistic accommodations for LEP students exempted from the TAKS by the LPAC.

The participation rates are calculated as the number of students participating divided by the number of students enrolled on the test date. Counts are summed across grades for Grades 3–8 and 10 for each subject (Reading/Language Arts and Mathematics). Participation rates are calculated for all students and each student group. All calculations are rounded to the nearest whole percent.

Students are counted as participants (numerator of the participation rate) if they were tested on the TAKS (English or Spanish), the SDAA or LDAA (for ARD-exempt students), the RPTE (for LEP-exempt students), or a released TAKS Mathematics test (for LEP-exempt students). This includes both scored tests and students who were tested but the test answer document was not scored. For students tested on LDAA, the TAKS answer document must indicate that the student was assessed on LDAA in order to be included as a participant. Similarly, LEP-exempt Mathematics students are considered participants if their TAKS answer document is coded as tested on a released TAKS Mathematics test. For all other assessments, only students coded as absent on the day of testing are not counted as participants.

Participation Full Academic Year

Participation rates are based on all students enrolled at the time of testing. The calculation is *not* limited to students enrolled for the full academic year. For TAKS Grade 3 Reading, results from both the first and second administrations are used to calculate participation.

Participation Student Groups Evaluated

The student groups for which AYP participation rates are calculated are African American, Hispanic, White, economically disadvantaged, special education, and LEP students. Student information coded on the test answer documents is used to assign students to groups. Where student groups are presented as a percentage of all students, the percentages are rounded to the nearest whole percent.

Special Education: If a student is tested on the SDAA or LDAA for either Reading/Language Arts or Mathematics, the student is included in the special education group for both subjects.

LEP: Only students identified as LEP in 2003-04 are included in the LEP group for participation. If a student is identified as a LEP student on the TAKS English, TAKS Spanish, or SDAA tests for either subject, the student is included in the LEP group for both subjects. If the student is tested on the RPTE, the student is included in the LEP student group for both subjects. If the LEP field is blank on all answer documents, the student is assumed to be non-LEP.

Minimum Size Requirements: For the participation rate to be included in the AYP calculation at the all students level, the district or campus must have at least 40 students enrolled at the time of testing. Districts and campuses with fewer than 40 students enrolled at the time of testing are not required to meet the participation rate measures.

For a student group to be included in the AYP participation calculation, a district or campus must have:

- 50 or more students in the group enrolled on the test date (summed across Grades 3–8 and 10) for the subject, and the student group must comprise at least 10 percent of all students enrolled on the test date; ***or***
- 200 or more students in the group enrolled on the test date, even if that group represents less than 10 percent of all students enrolled on the test date.

Participation Standard

For each district and campus, all students and each student group meeting the minimum size requirement for students enrolled on the test date must have **95** percent of students participating for Reading/Language Arts and Mathematics.

Average Participation Rate

For each district and campus, all students and each student group meeting minimum size requirements for students enrolled on the test date that does not meet the 95 percent standard participation will be re-evaluated using the aggregate

participation results for two years. Reading/Language Arts and Mathematics participation results for 2003-04 will be combined with the 2002-03 participation results.

Other Measures

In addition to Reading/Language Arts and Mathematics, each district and campus is required to meet AYP standards on one other measure—Graduation Rate or Attendance Rate. The other measure evaluated for a district or campus is based on the grades offered. See *Section II* for additional information on determination of which other measure is used.

Graduation Rate

The high school Graduation Rate is the *graduates* component of the longitudinal completion/student status rate. For more information about the longitudinal completion/student status rate calculation, see *Secondary School Completion and Dropouts in Texas Public Schools 2002–03* at http://www.tea.state.tx.us/research/dropout/0203/index.html. Due to the timing of the availability of data, the completion/student status rate is a prior-year measure. For example, the Graduation Rate evaluated as part of the 2004 AYP calculations is the rate for the Class of 2003.

Graduation Rate Standard

The standard for Graduation Rate is defined as the percent of students entering ninth grade and classified as graduates four years later. The standard is **70.0** percent of students classified as graduates. Districts and campuses are required to meet the 70.0 percent standard at the all students level only. Student group Graduation Rates are not evaluated against the 70.0 percent standard.

Graduation Rate Improvement Standard

For districts and campuses not meeting the Graduation Rate standard at the all students level, the AYP criteria for Graduation Rate is met if there is improvement from the prior year on the Graduation Rate. The district or campus shows improvement on the Graduation Rate if the Class of 2003 Graduation Rate is higher than the Class of 2002 Graduation Rate at the all students level. Graduation Rates are rounded to one decimal place before improvement is calculated. Therefore, 0.1 is the minimum improvement required. Districts and campuses that meet the 70.0% Graduation Rate standard are not also required to show improvement.

Graduation Rate Minimum Size Requirement

All Students: For the Graduation Rate to be evaluated in the AYP calculation at the all students level, the district or campus must have at least 40 students in the completion/student status rate class. Districts and campuses with fewer than 40 students in the completion/student status rate class are not required to meet the Graduation Rate measures. If a

district or campus meets the minimum size requirement for the Graduation Rate for the current year, improvement from the prior year is calculated even if the district or campus does not meet the minimum size requirement on the Graduation Rate for the prior year. Improvement is not calculated if the district or campus does not have a Graduation Rate for the prior year.

For Reading/Language Arts and Mathematics performance improvement, the district or campus is not required to show improvement on the Graduation Rate unless minimum size requirements are met for both the current year and prior year.

Student Groups: Districts and campuses are not required to meet the Graduation Rate standard for student groups. Graduation Rates for student groups are only included in the AYP calculation in the event they are evaluated as part of performance improvement. Where student groups are reported as a percentage of all students for Graduation Rate, the percentages are rounded to the nearest one-tenth of a percent. For a student group Graduation Rate to be included in the AYP improvement calculation, a district or campus must have:

- 50 or more students in the student group in the completion/student status rate class, and the student group must comprise at least 10.0 percent of all students in the completion/student status rate class; ***or***
- 200 or more students in the student group in the completion/student status rate class, even if that group represents less than 10.0 percent of all students in the completion/student status rate class.

If the student group does not meet the Graduation Rate minimum size requirements for both the current year and the prior year, the district or campus is not required to show improvement on the Graduation Rate as part of performance improvement.

Attendance Rate

The Attendance Rate is based on attendance of all students in Grades 1 through 12 for the entire school year. Due to the timing of the availability of data, the Attendance Rate is a prior-year measure. For example, the Attendance Rate evaluated as part of the 2004 AYP calculation is the 2002–03 Attendance Rate. The Attendance Rate is calculated as follows:

$$\frac{\text{Total number of days students were present in 2002–03}}{\text{Total number of days students were in membership in 2002–03}} \times 100$$

The primary source of student group identification for the Attendance Rate is the demographic record submitted with the PEIMS attendance record. Student race/ethnicity is reported for each student as part of the attendance data submission. Students are included in the special education student group if they have special education attendance reported for any six-week reporting period. Students are included in the LEP student group if they have bilingual/ESL attendance reported for any six-week reporting period, or if they have a matching fall enrollment record coded as LEP. Students are included in the economically disadvantaged student group if they have a matching fall enrollment record coded as economically disadvantaged.

Attendance Rate Standard

The standard for Attendance Rate is an average attendance rate of **90.0** percent. Districts and campuses are required to meet the 90.0 percent standard at the all students level only. Student group Attendance Rates are not evaluated against the 90.0 percent standard.

Attendance Rate Improvement Standard

For districts and campuses that do not meet the Attendance Rate standard at the all students level, the AYP requirements for Attendance Rate are met if there is improvement from the prior year on the Attendance Rate. The district or campus shows improvement on the Attendance Rate if the 2002–03 Attendance Rate is higher than the 2001–02 Attendance Rate at the all students level. Attendance rates are rounded to one decimal place before improvement is calculated. Therefore, 0.1 is the minimum improvement required. Improvement on the Attendance Rate is not required for districts and campuses that meet the 90.0% standard.

Attendance Rate Minimum Size Requirement

The minimum size requirements for Attendance Rates are based on total days in membership rather than individual student counts.

All Students: For the Attendance Rate to be evaluated in the AYP calculation at the all students level, the district or campus must have at least 7,200 total days in membership (40 students x 180 school days). Districts and campuses with fewer than 7,200 total days in membership are not required to meet the Attendance Rate standard. If a district or campus meets the minimum size requirement for the Attendance Rate for the current year, improvement from the prior year is calculated even if the district or campus does not meet the minimum size requirement on the Attendance Rate for the prior year. Improvement is not calculated if the district or campus does not have an Attendance Rate for the prior year.

For Reading/Language Arts and Mathematics performance improvement, the district or campus is not required to show improvement on the Attendance Rate for all students unless minimum size requirements are met for both the current year and prior year.

Student Groups: Districts and campuses are not required to meet the Attendance Rate standard for student groups. Attendance Rates for student groups are only included in the AYP calculation in the event they are evaluated as part of performance improvement. Where student groups are reported as a percentage of all students for Attendance Rate, the percentages are rounded to the nearest one-tenth of a percent. For a student group Attendance Rate to be included in the AYP improvement calculation, a district or campus must have:

- 9,000 or more total days in membership (50 students x 180 school days), and the student group must comprise at least 10.0 percent of total days in membership for all students; ***or***
- 36,000 or more total days in membership (200 students x 180 school days), even if the group represents less than 10.0 percent of total days in membership for all students.

If the student group does not meet the Attendance Rate minimum size requirement for both the current year and the prior year, the district or campus is not required to show improvement on the Attendance Rate as part of the performance improvement standards.

Rounding

In 2004, the rules for rounding performance and participation measures have changed, and may affect whether a campus or district meets AYP.

Performance

Performance measures are rounded to nearest whole percent. For example, a school obtaining a 46.5% on Reading/Language Arts will have their performance rounded up to 47%. On the other hand, another school obtaining a 46.4% on the same measure will have their performance rounded down to 46%. It is the rounded performance number that is compared to performance standards.

Performance improvement calculations are performed *after* rounding each year's performance. For example, a school obtaining 32.4% on Mathematics in 2004 and 28.5% on the same measure in 2003 would achieve a performance improvement of 3% (32% in 2004 minus 29% in 2003; note that if the subtraction was performed before the rounding, we would get 32.4 - 28.5 = 3.9%, which rounds to a performance improvement of 4%).

TABLES AND GRAPHICS May 6, 2005 30 TexReg 2717

Participation

As with performance, participation is rounded to nearest whole percent. For example, a school obtaining a 94.5% on Mathematics participation will have their participation rounded up to 95%, while another school obtaining a 94.4% on the same measure will have their participation rounded down to 94%. The participation measure is compared to the participation standard after rounding.

The average participation is calculated based on the total number of students in the combined results of both years. The total number of students participating is divided by the total number of students in the participation measure for both 2002-03 and 2003-04 combined. The resulting rate is rounded to the nearest whole percent.

Other Measures

Unlike performance and participation, performance on the other measure is rounded to the nearest one-tenth of a percent. For example, a high school with a Graduation Rate of 69.95% would have their other measure rounded up to 70.0%, while another high school with a Graduation Rate of 69.94% would have their other measure rounded down to 69.9%. The other measure is compared to the standard after rounding. Also note that improvement calculations for performance improvement determinations are made after rounding. For example, an elementary school obtaining a 90.95% Attendance Rate in 2004 and having a 90.94% Attendance Rate in 2003 would achieve an Attendance Rate improvement of 0.1% (91.0% minus 90.9%; note that if the subtraction was performed before rounding, we would get 90.95 – 90.94 = 0.01%, which rounds to an improvement of 0.0%).

Student Groups

Student group percentages are rounded to the nearest whole percent for all measures.

Small Districts and Campuses

Performance

Small districts and campuses, those with fewer than 50 total students tested in Grades 3–8 and 10, are evaluated based on their own assessment results to the greatest extent possible. Small districts and campuses are evaluated first against the same standards (performance standard or performance improvement) as larger districts and campuses. If a small district or campus meets AYP under either the performance standard or performance improvement, the district or campus is rated as *Meets AYP* and no further special analyses are employed. On the other hand, if a small district or campus misses AYP under both the performance standard and performance improvement, additional special analyses are employed.

Confidence Intervals
Districts and campuses with at least 10, but fewer than 50, total students tested in either Reading/Language Arts or Mathematics are evaluated based on the all students performance of the district or campus for the subject using confidence intervals. Confidence intervals allow AYP to be met within a statistical margin of error that is determined by the number of students evaluated in the small district or campus.

Uniform Averaging
Uniform averaging involves combining a district's or campus' 2003-04 AYP results with its 2002-03 AYP results and determining AYP status using data aggregated over the two years.

Pairing
Districts and campuses with fewer than 10 assessments that did not meet AYP under uniform averaging (see above) are evaluated based on the all students performance results of an assigned pairing relationship for the subject. Campuses that have a pairing relationship established with another campus or the district for state accountability ratings will use that pairing relationship for AYP. Results at the all student level will be applied to the paired campus or the district. Campuses that do not have such a pairing relationship will have their district's performance (again, at the all students level) applied to the campus. If the paired district or campus is not evaluated, the campus receives a 2004 AYP Status of *Not Evaluated.*

Districts and Campuses with Fewer than 5 Assessments
Districts and campuses with fewer than 5 assessments that did not meet AYP will be reviewed on a case-by-case basis.

Participation
Districts and campuses with fewer than 40 total students enrolled in the grades evaluated for AYP (summed across Grades 3–8 and 10) on the test date are not required to meet the test participation standard. The AYP status for these districts and campuses is based on meeting the performance standards for the Reading/Language Arts and Mathematics measures and for the Graduation Rate or Attendance Rate measures if minimum size requirements for those measures are met.

Districts and campuses with at least 40 total students enrolled in Grades 3–8 and 10 on the test date are required to meet the participation standard.

TABLES AND GRAPHICS May 6, 2005 30 TexReg 2719

Other Measures

Small districts and campuses not meeting the minimum size requirement for all students on the Graduation Rate or Attendance Rate are not required to meet the performance standard on these measures. AYP Status for these districts and campuses is based on the Reading/Language Arts and Mathematics measures.

Districts and Campuses with No Students in Grades Evaluated For AYP

Districts

Districts with no students in grades evaluated for AYP (Grades 3–8 and 10) receive a 2004 AYP Status of *Not Evaluated.*

Campuses

Performance

Campuses with students in Grades 1–12 but no students in the grades evaluated for AYP (Grades 3–8 and 10) are evaluated based on the all students performance results of an assigned pairing relationship for the subject. Campuses that have a pairing relationship established with another campus or the district for state accountability ratings will use that pairing relationship for AYP. Campuses that do not have a state accountability pairing relationship will have their district's performance results applied to the campus. For campuses that are paired, only the all students performance results are shared. If the paired district or campus meets the performance standard or performance improvement at the all students level, the campus is considered to have met the performance standard for the subject. If the paired district or campus is not evaluated, the campus receives a 2004 AYP Status of *Not Evaluated.*

Participation

Campuses with no students in Grades 3–8 and 10 are not required to meet the AYP participation standard for 2004.

Other Measures

Campuses with no students in Grades 3–8 and 10 are required to meet the AYP standard for the other measure (Graduation Rate or Attendance Rate) if they meet the minimum size requirement for that measure at the all students level. Campuses not meeting the minimum size requirement for the other measure are not required to meet the standard on that measure. AYP Status for these campuses is based on the Reading/Language Arts and Mathematics measures.

Section IV: Appeals

Superintendents are provided the opportunity to appeal data used to determine 2004 AYP Status under a limited set of circumstances and within a defined time limit. In 2004, all appeals will be resolved before the public release of 2004 AYP Status.

Originally, both the state accountability ratings and AYP status were planned for release on September 30, 2004. Extended negotiations between USDE and TEA delayed the development of the AYP system for nearly four months. In addition, the most critical issues affecting the initial stages of performance measure calculation were the last issues to be finalized with USDE, meaning that the redesign of the AYP process for 2004 could not begin until these decisions were made. The redesign involved developing, writing, testing, and documenting over 100 new computer programs; performing and checking complex calculations; and designing new guidelines, reports, and websites to communicate the information to a variety of audiences, ranging from technical staff in the school districts to the general public.

The extensive redesign means that districts have never seen the performance measures that will be used to determine 2004 AYP status. Calculation of the AYP performance measures will be based on USDE decisions that require TEA to combine results across the various testing platforms, count certain "proficient" scores as "not proficient" scores, and combine results across grades 3-8 and 10. Results for grades 9 and 11 are excluded because standards had to be set in 2002 before grades 9 and 11 were tested.

Since the AYP measures are substantially different and more complex than last year, districts will be allowed to review preliminary data generated by the new system and will have an opportunity to appeal those data before the final AYP status is released publicly. The 2004 AYP data will be made available to districts electronically through a Texas Education Agency Secure Environment (TEASE) website on November 15, 2004.

Key Dates Related to Appeals

Once the AYP data are available to districts on November 15, 2004, TEA will begin accepting appeals. Confidential unmasked data tables will be available to all campuses and districts on November 15. Superintendents may submit a written appeal of the 2004 AYP data to the commissioner of education through Friday, December 17, 2004. All appeals must be postmarked no later than December 17, 2004. For districts and campuses that could be subject to Title I School Improvement Requirements, some additional information related to data availability and appeals is provided below.

TABLES AND GRAPHICS May 6, 2005 30 TexReg 2721

Districts and Campuses Subject to Title I School Improvement Requirements
During the second week of August, TEA provided notification to districts and campuses that either were subject to Title I School Improvement requirements in the 2003-04 school year or could be subject to Title I School Improvement requirements if they miss 2004 AYP. The notifications outlined the possible stages of school improvement and the requirements of each stage. Campuses that were subject to School Improvement requirements in 2003-04 and will remain subject to School Improvement requirements with the 2004 release must continue to implement those requirements. Another letter was sent on September 14, 2004 that informed the same group of campuses and districts that they will receive notification of their 2004-05 school improvement status on September 28. Preliminary AYP data will be provided for campuses subject to school improvement. If a campus is identified as subject to improvement requirements, they will need to begin implementing requirements (including school choice provisions) immediately and must notify parents about school choice options by September 30. The September 14 letter also directed that even if a campus appeals and the appeal is granted, the campus must allow all requests for school choice, including transportation, to continue through the end of the school year. Whether to allow such school transfers to continue until the student has completed the highest grade level available at the school of choice is optional for the school districts affected.

General Parameters for Written Appeals

Districts and campuses must submit written appeals under the signature of the district superintendent. See instructions that follow for submitting appeals.

- For any district or campus, only one opportunity to appeal is permitted to appeal on any single measure.
- **Appeals are not a data correction opportunity!** Appeals should be based upon a data or calculation error attributable to TEA, regional education service centers (ESCs), or the test contractor for the student assessment program. However, problems due to district errors on PEIMS data submissions or on test answer sheets are considered on a case-by-case basis.
- Appeals are not considered for measures on which the district or campus meets the AYP standards. For example, an appeal to reevaluate campus Reading/Language Arts performance or participation is not considered for a campus that meets the AYP standards for Reading/Language Arts.
- Appeals **are** considered in circumstances that would *not* result in the campus meeting AYP for 2004. For example, an appeal to reevaluate campus Reading/Language Arts performance is considered for a campus that does not meet the AYP standards for both Reading/Language Arts and Mathematics, even though this appeal alone would not result in the campus

meeting AYP for 2004. These appeals are considered because Title I School Improvement requirements are triggered by not meeting AYP standards on the same measure for two consecutive years.

- Appeals will be resolved by the February 2005 release date for final 2004 AYP Status. The commissioner of education will respond in writing to each written appeal received.
- Appeal results will be reflected in the final 2004 AYP Status released in February 2005.
- If an appeal is granted and the district or campus receives a final 2004 AYP status of Meets AYP, the status will be annotated with the comment "Appeal."
- If district 2004 AYP data is appealed, the final 2004 AYP Status of the district may also apply to any campus that is assigned a 2004 AYP Status based on district performance at the All Students level.
- The decision of the commissioner of education is final and not subject to further appeal or negotiation.
- Data are never modified, even when appeals are granted.

Instructions for Submitting Written Appeals

Superintendents appealing data used to determine 2004 AYP Status should prepare a written request addressed to the commissioner of education that includes:

- a statement that the letter is an appeal of the 2004 AYP data;
- the district and/or campuses for which the appeal is being submitted (including county-district-campus numbers for campuses);
- the measure(s) and data in question (more than one measure can be appealed in the same letter);
- the perceived error;
- if applicable, the reason the perceived error is attributable to the TEA, a regional ESC, or the test contractor for the student assessment program;
- the reason the perceived error resulted in the district and/or campuses not meeting the AYP standard for the measure; and
- when student-level information is in question, supporting information must be provided for review, including a list of the students by name and identification number.

It is insufficient to claim data are in error without providing information with which the appeal can be evaluated. Lists of students included in the AYP participation and performance measures will be available on the TEASE website at the time the AYP data tables are made available on November 15. Templates for documenting student records will also be provided for some types of appeals – see Guidelines by Measure below.

Appeal letters should be mailed to the following address:

Shirley J. Neeley
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, TX 78701-1494

While not required, sending a copy to staff in the Department of Accountability and Data Quality would be appreciated and may expedite the processing of the appeal. This staff copy should be mailed to the same address listed above but to the attention of:

Criss Cloudt, Associate Commissioner for Accountability and Data Quality

Guidelines by Measure

The following guidelines describe the circumstances under which AYP data may be appealed and the documentation required in support of the appeal. Appeals submitted under these guidelines are not guaranteed to be granted. Each appeal will be evaluated based on the documentation provided and other information available at TEA.

Reading and Mathematics

If a problem is identified with data received from the test contractor, the assessment data may be appealed. An appeal of these measures should reflect a serious problem such as a missing grade level or campus. Coding errors on TAKS, SDAA, LDAA, or RPTE will be considered on a case-by-case basis.

- If the district has requested that the Reading/Language Arts results be re-scored, a copy of the dated request to the test contractor should be provided with the appeal.

- If other serious problems are involved in the appeal, copies of correspondence with the test contractor should be provided with the appeal.

1% Cap

If the district or any campus missed AYP for Reading or Mathematics due to test results counted as "not proficient" under the 1% cap for students who met ARD expectations, or baseline SDAA testers for whom ARD expectations had not been established, the SDAA and/or LDAA results may be appealed.

- The AYP data table will indicate if Reading or Mathematics performance did not meet the AYP standard due solely to the 1% cap.
- Districts appealing to exceed the 1% cap based on appropriate testing of students under state policy must submit documentation in a specified format. Listings of students with disabilities counted in the performance measure as "not proficient" who met ARD expectations on the SDAA and/or LDAA, and for whom ARD expectations had not been established, will be available to districts on the TEASE website. Appeals of the 1% cap must include the list of students completed according to the instructions provided. Districts are asked to check that each student was tested appropriately under state policy and submit the lists under the signature of the superintendent, with a statement affirming that documentation is available locally to support the information provided on the lists.
- Districts appealing to exceed the 1% cap based on the prevalence of students with disabilities in the grades tested must meet the following conditions.
    - The district must document that the prevalence of students with disabilities exceeds the 1% cap in the grades tested.
    - The district must explain why the prevalence of such students exceeds 1%. Examples of explanations might include school, community, or health programs in the district attendance boundaries that have drawn large numbers of families of students with disabilities.
- District and campus testing practices related to students with disabilities, including excessive exemptions from TAKS, will be considered in evaluating 1% cap appeals.

Performance Improvement

If the district or any campus does not meet AYP standards for Reading and/or Mathematics because they did not meet "safe harbor" performance improvement for any Reading or Mathematics measure but did show improvement on the

measure, the district can appeal to have the performance measure reevaluated based on confidence intervals. NOTE: Reading and/or Mathematics improvement will only be reevaluated for districts and campuses that show improvement on the Graduation Rate or Attendance Rate measure for the student group in question, as required under performance improvement.

Participation

- If the district or any campus did not meet the 95% participation rate standard for Reading or Mathematics because of students who were not tested due to extreme medical emergencies, the appeal should include documentation showing that the student was unable to participate in the assessment at any time during the testing window due to medical reasons. NOTE: State assessment policy requires testing of medically fragile students who receive instruction in homebound or hospital settings unless they are unable to participate in the assessment at any time during the testing window.
- If the district or any campus did not meet the 95% participation rate standard based on a very small number of total absences from the student group, the appeal should include documentation showing the reason for absence of each student.

LEP-Exempt Mathematics

If testing of LEP-exempt students on released TAKS mathematics tests with linguistic accommodations could not be reported on the answer documents due to the late receipt of instructions, identifying information for the students tested should be provided with the appeal. TEA correspondence to school administrators dated March 4, 2004, and March 18, 2004 explain the LEP coding procedures. The letters can be found on the TEA website at: http://www.tea.state.tx.us/ayp/2004/links.pdf.

Graduation Rate

In August, each school district was provided with a list of all students in their class of 2003 completion cohort that included the final status of each student in that cohort. Only students shown on this list may be appealed for Graduation Rate. For the Graduation Rate, only students with a final status of "graduate" are counted in the numerator of the rate calculation. The denominator of the rate calculation is the sum of the students with a final status of "graduate," "continue in school," "GED," or "dropout." Note that the list also included members of the cohort who left Texas public schools and students with identification errors. Only students shown in these lists may be appealed for the graduation rate indicator.

Accuracy of leaver data submitted to TEA by the district is a factor considered in evaluation of the merits of Graduation Rate appeals.

- If the district or any campus did not meet the 70.0% graduation rate standard because of students with disabilities shown with a final status of "continue in school" whose individual education plans (IEP) or individual transition plan (ITP) show 5-year (or longer) graduation plans, the appeal should include documentation showing the graduation plans.

- If the district or any campus did not meet the 70.0% graduation rate standard because of recent immigrant students with limited English proficiency (LEP), the appeal should include documentation showing the students' recent immigrant LEP status.

Current Year Attendance

As described in *Section III,* the 2004 AYP Status is based on 2002–03 Attendance Rates for districts and campuses that have Attendance Rates as their other measure. Districts can appeal to have 2004 AYP Status reevaluated using 2003–04 Attendance Rates for districts and campuses not meeting one or more of the 2004 AYP measures due to Attendance Rates. Eligible districts and campuses include the following:

- those that do not initially meet the Attendance Rate standard or improvement on the Attendance Rate for all students; and

- those that do not initially meet the AYP performance standard for Reading/Language Arts and/or Mathematics for all students or any student group because they do not show the required level of improvement on the Attendance Rate required as part of the performance improvement criteria, even though a 10% decrease in percent of students not meeting the performance standard is achieved.

Attendance Rate for all students (90.0% standard) will be reevaluated using 2003–04 attendance data. Improvement on the Attendance Rate for all students and student groups will be reevaluated using 2003–04 Attendance Rates compared to 2002–03 Attendance Rates. If attendance measures are reevaluated using current year attendance data, all measures based on attendance will be reevaluated. A district or campus cannot meet some 2004 AYP standards using 2002–03 Attendance Rates and meet other standards using 2003–04 Attendance Rates.

TABLES AND GRAPHICS May 6, 2005 30 TexReg 2727

Special Circumstance Appeals

Residential Treatment Centers

If the AYP status of a district that has a privately operated residential treatment center within its geographic boundaries is adversely affected by the inclusion of performance results for students from outside the district who were served at that center for fewer than 85 days, then the superintendent of that district may appeal for reconsideration of the district AYP status.

Results of Students Confined by Court Order

If the AYP status of a district is adversely affected by the performance of students confined by court order to a residential treatment center or a facility operated under contract with the Texas Youth Commission (TYC), then the superintendent of that district may appeal for reconsideration of the district AYP status.

Detention Centers and Correctional Facilities

If the AYP status of a district that has a pre-adjudication detention center or post-adjudication correctional facility within its geographic boundaries is adversely affected by the inclusion of dropouts not regularly assigned to the district, the superintendent of the district serving students in the facility may appeal for reconsideration of the district AYP status. Only pre-adjudication detention centers and post-adjudication correctional facilities registered with the Texas Juvenile Probation Commission are included.

Title I Targeted Assistance Campuses

All students were included in the participation and performance rate calculations for Title I campuses with targeted assistance programs. Districts can appeal to have the 2004 AYP status of any targeted assistance campuses recalculated based on the results of only Title I students if test answer documents were submitted for at least 50 Title I students on the targeted assistance campus.

Grades 9 and 11 TAKS

The AYP assessment measure is based on test results for Grades 3–8 and 10. Campuses with no students in Grades 3-11 are evaluated on the performance data for the campus with which they are paired for state accountability ratings. Campuses with no students in Grades 3–8 or 10 that are not paired for state accountability ratings are evaluated for 2004 AYP Status based on performance of the district at the all students level. If a campus with no students in Grades 3–8 or 10 that has students tested in Grades 9 and/or 11 does not meet the AYP performance measures, the district may appeal to have the campus evaluated based on its own TAKS results for Grades 9 and/or 11. The Reading/Language Arts and Mathematics

assessment performance and participation measures are evaluated for all students and for each student group meeting the minimum size requirement based on the Grades 9 and/or 11 test results. Campus performance on the other measure is also evaluated if the campus meets the minimum size requirement for all students on the other measure.

Figure: 28 TAC §3.3308(c)(2)(D)

PREMIUM INFORMATION (Boldface Type)

We (insert insurer's name) can only raise your premium if we raise the premium for all policies like yours in this state. (If the premium is based on the increasing age of the covered person for individual contracts or class of persons covered under group contracts, include information specifying when premiums will change.)

DISCLOSURES (Boldface Type)

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY (Boldface Type)

This is only an outline describing your policy's most important features. The policy is your (insurance contract) (contract for coverage). You must read the policy itself to understand all of the rights and duties of both you and (name of issuer).

RIGHT TO RETURN POLICY (Boldface Type)

If you find that you are not satisfied with your policy, you may return it to (insert issuer's address). If you sent the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT (Boldface Type)

If you are replacing another health insurance policy or other health coverage, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE (Boldface Type)

This policy may not fully cover all of your medical costs.

(For agents)
Neither (insert company's name) nor its agents are connected with Medicare.

(For direct response business)
(insert company's name) is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "The Medicare Handbook" for more details.

LIMITATIONS AND EXCLUSIONS (Boldface Type)

(Include language regarding any limitations and/or exclusions including those related to pre-existing conditions as required by subsection (c) of this section.)

REFUND OF PREMIUM (Boldface Type)

(Include language regarding refund, or no refund, of premium upon death of the insured or policy cancellation) as required by subsection (c) of this section.

(For Medicare Select:

GRIEVANCE PROCEDURES (Boldface Type)

Include language regarding grievance procedures as required by subsection (c) of this section.)

COMPLETE ANSWERS ARE VERY IMPORTANT (Boldface Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear).

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

(Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts in subsection (c)(2) of this section. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to §3.3306 of this title (relating to Minimum Benefit Standards.)

(Include an explanation of any innovative benefits on the coverage page and in the chart, in a manner approved by the commissioner.)

[12 Point]

[COMPANY NAME]
Outline of Medicare Supplement Coverage - Cover Page: 1 of 2
Benefit Plan(s)_____[insert letter(s) of plan(s) being offered]

These charts show the benefits included in each of the standard Medicare supplement plans. Every company must make available Plan "A". Some plans may not be available in your state.

BASIC BENEFITS for Plans A - J:
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (Generally 20% of Medicare-approved expenses), or copayments.for hospital outpatient services.
Blood: First three pints of blood each year.

A	B	C	D	E	F	F*	G	H	I	J	J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits		Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible		Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	
		Part B Deductible			Part B Deductible					Part B Deductible	
					Part B Excess (100%)		Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)	
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	
			At-Home Recovery				At-Home Recovery		At-Home Recovery	At-Home Recovery	
				Preventive Care not covered by Medicare						Preventive Care not covered by Medicare	

***Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year$[1690] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include, the plan's separate foreign travel emergency deductible.**

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page: 2 of 2

Basic Benefits for Plans K and L include similar services as plans A-J, but cost-sharing for the basic benefits is at different levels.

J	K**	L**
Basic Benefits	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 50% Hospice cost-sharing 50% of Medicare-eligible expenses for the first three pints of blood 50% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 75% Hospice cost-sharing 75% of Medicare-eligible expenses for the first three pints of blood 75% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services
Skilled Nursing Coinsurance	50% Skilled Nursing Facility Coinsurance	75% Skilled Nursing Facility Coinsurance
Part A Deductible	50% Part A Deductible	75% Part A Deductible
Part B Deductible		
Part B Excess (100%)		
Foreign Travel Emergency		
At-Home Recovery		
Preventive Care NOT covered by Medicare		
	$[4000] Out of Pocket Annual Limit***	$[2000] Out of Pocket Annual Limit***

**** Plans K and L provide for different cost-sharing for items and services from Plans A – J.**
Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of the calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare-approved amounts, called "Excess Charges". You will be responsible for paying excess charges.

*****The out-of-pocket annual limit will increase each year for inflation.**

See Outlines of Coverage for details and exceptions.

PLAN A

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION *			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$0	$[876] (Part A Deductible)
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the additional 365 days	$0	$0	All costs

PLAN A

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE *			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	$0	Up to $[109.50] a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN A

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

* Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.
**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic test, durable medical equipment;			
First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN A

PARTS A & B

* Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE-APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
--Remainder of Medicare-Approved Amounts	80%	20%	$0**

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies:			

First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the additional 365 days	$0	$0	All costs

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital;			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	$0	Up to $[109.50] a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**

Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN B

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment;			
First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0**

Next $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN B

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment First $[100] of Medicare- Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	$0**

PLAN C

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the Additional 365 days	$0	$0	All costs

PLAN C

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN C

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN C

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE-APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
--Remainder of Medicare-Approved Amounts	80%	20%	$0**
OTHER BENEFITS - NOT COVERED BY MEDICARE			
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN D

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the additional 365 days	$0	$0	All costs

PLAN D

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital;			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN D

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment;			
First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN D

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE-APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
--Remainder of Medicare-Approved Amounts	80%	20%	$0**
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE:			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare-Approved a Home Care Treatment Plan:			
Benefit for each visit	$0	Actual Charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare-Approved visit)	$0	Up to the number of Medicare-Approved visits, not to exceed 7 each week	Balance
Calendar year maximum	$0	$1,600	Balance

PLAN D

OTHER BENEFITS - NOT COVERED BY MEDICARE

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN E

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**

91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the additional 365 days	$0	$0	All costs

PLAN E

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**

Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN E

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment;			
First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)

Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN E

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	**MEDICARE PAYS**	**PLAN PAYS**	**YOU PAY**
HOME HEALTH CARE			
MEDICARE-APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
--Remainder of Medicare-Approved Amounts	80%	20%	$0**

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN E

OTHER BENEFITS - NOT COVERED BY MEDICARE
CONTINUED

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.
****$0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**
†Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
† PREVENTIVE MEDICAL CARE BENEFIT-NOT COVERED BY MEDICARE			
Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare:			
First $120 each calendar year	$0	$120	$0**
Additional charges	$0	$0	All costs

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**
‡This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE, ‡] YOU PAY
HOSPITALIZATION*			

Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the additional 365 days	$0	$0	All costs

PLAN F OR HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

‡This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			

First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN F OR HIGH DEDUCTIBLE PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

‡This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY

MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment;			
First $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	100%	$0**
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICE	100%	$0	$0**

PLAN F OR HIGH DEDUCTIBLE PLAN F

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

‡This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
--Remainder of Medicare-Approved Amounts	80%	20%	$0**

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	**MEDICARE PAYS**	**[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS**	**[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY**
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	**MEDICARE PAYS**	**PLAN PAYS**	**YOU PAY**
HOSPITALIZATION*			

Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the Additional 365 days	$0	$0	All costs

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs

BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services:	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN G

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	80%	20%

BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN G

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
--Remainder of Medicare-Approved Amounts	80%	20%	$0**
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			

Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
Benefit for each visit	$0	Actual charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare-Approved visit)	$0	Up to the number of Medicare-Approved visits, not to exceed 7 each week	Balance
Calendar year maximum	$0	$ 1,600	Balance

PLAN G

OTHER BENEFITS - NOT COVERED BY MEDICARE

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE:			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN H

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the Additional 365 days	$0	$0	All costs

PLAN H

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital;			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN H

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment;			
First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN H

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
--Remainder of Medicare-Approved Amounts	80%	20%	$0**
OTHER BENEFITS - NOT COVERED BY MEDICARE			
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the Additional 365 days	$0	$0	All costs

PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital;			
First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN I

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment;			
First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	100%	$0**
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN I

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE-APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$0	$[100] (Part B Deductible)
--Remainder of Medicare-Approved Amounts	80%	20%	$0**
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
Benefit for each visit	$0	Actual Charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare-Approved visit)	$0	Up to the number of Medicare-Approved visits, not to exceed 7 each week	Balance
Calendar year maximum	$0	$ 1,600	Balance

PLAN I

OTHER BENEFITS - NOT COVERED BY MEDICARE

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.
**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	$0	$0	$250
Remainder of charges*	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**
‡This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY
HOSPITALIZATION*			

Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[876]	$[876] (Part A Deductible)	$0**
61st through 90th day	All but $[219] a day	$[219] a day	$0**
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0**
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare Eligible Expenses	$0**+
--Beyond the Additional 365 days	$0	$0	All costs

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD
CONTINUED

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

‡This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE, ‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE, ‡] YOU PAY
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital:			

First 20 days	All approved amounts	$0	$0**
21st through 100th day	All but $[109.50] a day	Up to $[109.50] a day	$0**
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0**
Additional amounts	100%	$0	$0**
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

+**NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

‡This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY

MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 20%	$0**
Part B Excess Charges (Above Medicare-Approved Amounts)	$0	100%	$0**
BLOOD			
First 3 pints	$0	All costs	$0**
Next $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
Remainder of Medicare-Approved Amounts	80%	20%	$0**
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0**

PLAN J or HIGH DEDUCTIBLE PLAN J

PARTS A & B

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**

‡This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY
HOME HEALTH CARE			

MEDICARE APPROVED SERVICES:			
Medically necessary skilled care services and medical supplies	100%	$0	$0**
Durable medical equipment			
--First $[100] of Medicare-Approved Amounts*	$0	$[100] (Part B Deductible)	$0**
--Remainder of Medicare-Approved Amounts	80%	20%	$0**
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
Benefit for each visit	$0	Actual charges to $40 a visit	Balance
Number of visits covered (must be received within 8 weeks of last Medicare-Approved visit)	$0	Up to the number of Medicare-Approved visits, not to exceed 7 each week	Balance
Calendar year maximum	$0	$1,600	Balance

PLAN J or HIGH DEDUCTIBLE PLAN J

OTHER BENEFITS - NOT COVERED BY MEDICARE

(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**
‡This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			

First $250 each calendar year	$0	$0	$250
Remainder of Charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN J or HIGH DEDUCTIBLE PLAN J

OTHER BENEFITS - NOT COVERED BY MEDICARE
CONTINUED

**** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
(For Medicare Select Plans, add a triple asterisk "*" where appropriate, and language disclosing circumstances where covered person is responsible for some or all charges. For example: If you do not utilize a network provider, you are responsible for all charges.)**
‡This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year $[1690] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.
†Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1690] DEDUCTIBLE,‡] PLAN PAYS	[IN ADDITION TO $[1690] DEDUCTIBLE,‡] YOU PAY
†PREVENTIVE MEDICAL CARE BENEFIT-NOT COVERED BY MEDICARE			
Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare:			
First $120 each calendar year	$0	$120	$0**
Additional charges	$0	$0	All costs

PLAN K

* You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[4000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

***** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION**			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[438] (50% of Part A deductible)	$[438] (50% of Part A deductible)♦
61st thru 90th day	All but $[219] a day	$[219] a day	$0***
91st day and after:			
--While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0***
--Once lifetime reserve days are used:			
--Additional 365 days	$0	100% of Medicare eligible expenses	$0***+
--Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE**			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility			
Within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0***
21st thru 100th day	All but $[109.50] a day	Up to $[54.75] a day	Up to $[54.75] a day ♦
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	50%	50%♦
Additional amounts	100%	$0	$0***

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	50% of coinsurance or copayments	50% of coinsurance or copayments♦

+ **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN K

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

***** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
******** Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts****	$0	$0	$[100] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 10%	Generally 10% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs (and they do not count toward annual out-of-pocket limit of $[4000])*

BLOOD First 3 pints Next $[100] of Medicare Approved Amounts**** Remainder of Medicare Approved Amounts	$0 $0 Generally 80%	50% $0 Generally 10%	50%♦ $[100] (Part B deductible)**** ♦ Generally 10% ♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0***

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[4000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN K

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies --Durable medical equipment First $[100] of Medicare Approved Amounts Remainder of Medicare Approved Amounts	 100% $0 80%	 $0 $0 10%	 $0*** $[100] (Part B deductible) ♦ 10%♦

PLAN L

* You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[2000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

***** $0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[876]	$[657] (75% of Part A deductible)	$[219] (25% of Part A deductible)♦
61st thru 90th day	All but $[219] a day	$[219] a day	$0***
91st day and after: --While using 60 lifetime reserve days	All but $[438] a day	$[438] a day	$0***
--Once lifetime reserve days are used: --Additional 365 days	$0	100% of Medicare eligible expenses	$0***+
--Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0***
21st thru 100th day	All but $[109.50] a day	Up to $[82.13] a day	Up to $[27.37] a day♦
101st day and after	$0	$0	All costs
BLOOD First 3 pints Additional amounts	 $0 100%	 75% $0	 25%♦ $0***
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	75% of coinsurance or copayments	25% of coinsurance or copayments ♦

+ **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN L

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*****$0 indicates your liability for covered charges. You are responsible for all other non-covered charges.**
******** Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts****	$0	$0	$[100] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All costs (and they do not count toward annual out-of-pocket limit of $[2000])*
BLOOD First 3 pints	$0	75%	25%♦
Next $[100] of Medicare Approved Amounts****	$0	$0	$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5%♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0***

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[2000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN L

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$0	$0***
--Durable medical equipment First $[100] of Medicare Approved Amounts	$0	$0	$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	80%	15%	5% ♦

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Hidde Osinga, individually, and dba Osinga Dairy*, Cause No. GV403908 in the 126th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant Osinga owns and operates a dairy. An Agreed Order was issued February 5, 2003, by the Texas Commission on Environmental Quality ("TCEQ") assessing administrative penalties and water quality fees. Defendant failed to comply with the Order. On December 18, 2002, Defendant was cited for unauthorized discharge of wastewater from the dairy into a tributary of the Leon River. On December 18, 2002, Defendant was cited for allowing the amount of sludge in his wastewater retention facility to exceed the amount allowed by TCEQ regulations.

Proposed Agreed Judgment: Defendant Osinga shall pay the State civil penalties in the amount of Eight Thousand Eight Hundred Thirty Dollars ($8,830.00), administrative penalties in the amount of Eight Thousand Seven Hundred Dollars ($8,700.00), water quality fees and penalties in the amount of Eight Hundred Seventy Dollars ($870.00), and attorney's fees in the amount of Six Thousand Six Hundred Dollars ($6,600.00).

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Michael W. Hughes, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at 512 463-2110.

TRD-200501707
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 26, 2005

♦ ♦ ♦

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Commission on Environmental Quality (TCEQ), announces the issuance of **Request for Proposals (RFP) #303-5-10836-A**. TBPC seeks a five year lease of approximately 6,508 sq. ft. of office space in the Austin area, Travis County, Texas.

The deadline for questions is May 3, 2005, and the deadline for proposals is May 10, 2005 at 3:00 P.M. The award date is June 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58593.

TRD-200501708
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: April 26, 2005

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 15, 2005, through April 21, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 27, 2005. The public comment period for these projects will close at 5:00 p.m. on May 27, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Cedar Creek Subdivision; Location: The project site is located in Cedar Creek, south of FM 517, approximately 4.5 miles west of Interstate Highway 45, in the Cedar Creek Subdivision, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Algoa, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 292938; Northing: 3257871. Project Description: The applicant is requesting authorization to discharge fill

material into an approximate 1,900-foot-long stretch of an unimproved portion of Cedar Creek to improve water quality and protect against erosion. Development upstream from the project area has increased flow and velocity through the subject stretch of the creek and erosion is rapidly compromising the creek's banks. To stabilize the banks, the applicant proposes to place approximately 3,400 cubic yards of clay fill topped with 5,000 cubic yards of riprap into the channel. Small areas along the subject stretch of creek bed will be cut back and graded to allow for greater stabilization. There are no wetlands or vegetated shallows in the project area that would be impacted as a result of the proposed activity. The project is designed to improve the overall water quality of the creek. CCC Project No.: 05-0236-F1; Type of Application: U.S.A.C.E. permit application #23737 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: City of Corpus Christi; Location: The project is located on the Peoples Street T-Head located at the intersection of Shoreline Boulevard and Peoples Street, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 658600; Northing: 3075000. Project Description: The applicant proposes to construct four new docks (E, F, G, and H) with associated boat slips located on the westernmost side of the Peoples Street T-Head and one new commercial dock located perpendicular to the north side of the T-Head. Docks E and F would consist of a 550-foot-long by 8-foot-wide walkway. Dock E would have 10 finger piers that would be 60 to 80 feet long by 4 to 6 feet wide and Dock F would have 13 finger piers that would be 40 to 50 feet long by 3 feet wide with one exception that would be 8 feet wide. Dock G would be 600 feet long, 8 feet wide and have 15 finger piers on the south side and 14 on the north side. The finger piers would be 40 feet long and 3 feet wide. Dock H would be 500 feet long, 8 feet wide and would have 14 finger piers on each side that would be 32 feet long by 3 feet wide. The commercial dock would be 250 feet long and 8 feet wide and constructed as either a floating dock or a fixed-elevation dock. All docks would consist of timber and concrete walkways that would be concrete pile supported. Support piles would be driven in with an impact hammer from a barge. The proposed project would cover 0.71 acre of open water. No dredging or fill is proposed and no seagrass beds or oyster reefs are located within the proposed project area. CCC Project No.: 05-0238-F1; Type of Application: U.S.A.C.E. permit application #23726 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: City of Corpus Christi ; Location: The project is located adjacent to Corpus Christi Bay, along Ocean Drive between Hewitt Drive and Kush Lane, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 659500; Northing: 3071950. Project Description: The applicant proposes to improve an existing storm water outfall that is located on the bay side of Ocean Drive and drains into Corpus Christi Bay. Currently, the outfall consists of a concrete headwall and a 9 -by 9-foot concrete box culvert connected to a 185-foot-long open channel that receives tidal inflow from Corpus Christi Bay.

In order to compensate for the increased stormwater that will result from nearby drainage improvements, the applicant proposes to install a new box culvert that will extend along the length of the existing open channel. An area bayward of the existing headwall and the existing open channel would be excavated to a depth approximately 5 feet below the current flowline and filled with culvert bedding material to bring the area back to the currently existing elevation. The new box culvert would be placed on top of the culvert bedding material and backfilled on either side with suitable fill material. Approximately 3,400 cubic yards of material would be placed into 0.11 acre of jurisdictional area within the open channel to install the new box culvert. Water depths within the existing channel range from -2 to -3 feet mean high tide. Wing walls would be installed parallel to the shoreline both north and south of the new box culvert and a scour protection apron with velocity arrestors would be placed at the end of the box culvert. The northern wing wall would be 27 feet in length and the southern wing wall would be 31 feet in length. The proposed scour protection apron would consist of approximately 1,608 cubic yards of concrete riprap, stone riprap or articulated block mats that would be placed in a 0.3-acre area bayward of the new box culvert outfall. The applicant has indicated that the project site does not contain wetland vegetation, seagrasses or oysters. CCC Project No.: 05-0239-F1; Type of Application: U.S.A.C.E. permit application #23691 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501699
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 26, 2005

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §§403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, §§54.602, 54.611 - 54.618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #172e) for Institutional Commission Recapture Brokerage Services ("Services") for the Board. The selected respondent will assist the Comptroller and the Board by providing the requested Services consistent with the Board's Investment Policy and Guidelines related to the Texas Tomorrow Constitutional Trust Fund ("Fund"), as described in this RFP and the contract, if any resulting from it ("Contract"). The Fund currently includes a prepaid tuition program and a college savings plan, both as authorized under Section 529 of the Internal Revenue Code. The prepaid tuition program currently has approximately $1.5 billion dollars in invested assets. The Comptroller and Board anticipate the selected respondent will provide the Services for the domestic equity separate account mandates for the prepaid tuition program; however, there is no guarantee of any specific amount. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary Services. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about July 1, 2005.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, May 6, 2005, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after 2:00 p.m. CZT on Friday, May 6, 2005. The website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, May 23, 2005. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Wednesday, May 26, 2005, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24), no later than 2:00 p.m. (CZT), on Tuesday, June 7, 2005. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP. The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows:

Issuance of RFP--May 6, 2005, 2:00 p.m. CZT;

Non-Mandatory Letters of Intent to propose and Questions Due--May 23, 2005, 2:00 p.m. CZT;

Official Responses to Questions posted--May 25, 2005;

Proposals Due--June 7, 2005, 2:00 p.m. CZT;

Contract Execution--July 1, 2005, or as soon thereafter as practical;

Commencement of Project Activities--July 1, 2005, or as soon thereafter as practical.

TRD-200501701
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: April 26, 2005

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 05/02/05 -- 05/08/05 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 05/02/05 -- 05/08/05 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 [3] for the period of 05/01/05 -- 05/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 05/01/05 -- 05/31/05 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200501702
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 26, 2005

♦ ♦ ♦

Texas Commission on Environmental Quality

Notice of the Availability of the Draft April 2005 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2005 Update to the Water Quality Management Plan (draft WQMP update) for the State of Texas.

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas pollutant discharge elimination system (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft April 2005 WQMP update may be found on the commission's Web site located at *http://www.tnrcc.state.tx.us/permitting/waterperm/wqmp/index.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must

be submitted no later than 5:00 p.m. on June 6, 2005. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@tceq.state.tx.us.*

TRD-200501722
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 27, 2005

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued during the period of April 19, 2005 through April 26, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BLOOMINGTON INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014578001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located 150 feet south of Farm-to-Market Road 616, approximately 2 miles west of the intersection of Farm-to-Market Road 616 and U.S. Highway 87 in Victoria County, Texas.

CITY OF COLORADO CITY has applied for a renewal of Permit No. 10077-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 1,120,000 gallons per day via surface irrigation of 280 acres of non-public access hay and grass fields. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.7 miles south-southeast of the intersection of East Central Avenue and Washington Street along State Highway 163 and 1.7 miles east of the intersection of State Highway 163 and Farm-to-Market Road 1229 in Mitchell County, Texas.

CITY OF FAIR OAKS RANCH has applied for a renewal of Permit No. 11867-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day via surface irrigation of 280 acres of Fair Oaks Ranch Golf and Country Club land. The facility and disposal site are located on the northern border of Bexar County, west of Ralph Fair Road and south of Cibolo Creek at the extreme east side of Ralph Fair Ranch in Bexar County, Texas.

WALTER MADISON GRAY, SR. has applied for a major amendment to TPDES Permit No. 11449-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 99,000 gallons per day to a daily average flow not to exceed 300,000 gallons per day. The facility is located at 5601 Farm-to-Market Road 565 South, in the City of Baytown, in Chambers County, Texas.

THE CITY OF KERRVILLE has applied for a renewal with changes of TPDES Permit No. WQ0010576001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The applicant has requested removal of authorization for Marketing and Distribution of Class A sludge and the land application of Class A sludge on property owned, leased, or under the direct control of the permittee. The facility is located at 3650 Loop 534, at the end of Beach Street on the City Farm in the southeast section of the City of Kerrville in Kerr County, Texas.

CITY OF LYFORD has applied for a renewal of Permit No. 11210-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 270,000 gallons per day. The facility is located east of Lyford, approximately 0.8 miles east and 0.6 miles south of the intersection of State Highway 448 and Farm-to-Market Road 1921 in Willacy County, Texas.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13462-008, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 510,000 gallons per day. The facility is located approximately 0.5 mile west of the intersection of Farm-to-Market Road 732 and Joines Road on the south side of Joines Road in Cameron County, Texas.

THE CITY OF NORDHEIM has applied for a renewal of Permit No. 11163-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 27,500 gallons per day via evaporation and irrigation of 14 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2,000 feet southeast of the intersection of Farm- to-Market Road 239 and State Highway 72 in DeWitt County, Texas.

CITY OF PEARLAND has applied for a renewal of TPDES Permit No. 10134-010, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed a daily average flow of 2,500,000 gallons per day from outfall 001 in the interim phase, and not to exceed a daily average flow of 2,000,000 gallons per day from outfall 002 in the final phase. The facility is located on Dixie Farm Road, approximately 2.8 miles southwest of the Interstate Highway 45 and Dixie Farm Road interchange in Brazoria and Harris County, Texas.

PILOT INDUSTRIES OF TEXAS, INC. which operates an alkylates, lube oil intermediates, detergents, and surfactants manufacturing plant, has applied for a renewal of TPDES Permit No. 01899, which authorizes the discharge of process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 28,000 gallons per day via Outfall 001. The facility is located at 11623 North Houston Rosslyn Road, southwest of Farm-to-Market Road 249, in the City of Houston, Harris County, Texas.

REGENCY I-45/SPRING CYPRESS RETAIL, L.P. has applied for a renewal of TPDES Permit No. 12812-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 1518 Spring Cypress Road in the City of Spring in Harris County, Texas.

SAN DIEGO MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10270-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located adjacent to and east of Benavides Street, approximately 800 feet south of San Diego Creek, 2,200 feet east of State Highway 359 and 3,300 feet south of Sate Highway 44 in Duval and Jim Wells County, Texas.

TEXAS MUNICIPAL POWER AGENCY which operates the Gibbons Creek Lignite Mine, has applied for a renewal of TPDES Permit No. WQ0002460000, which authorizes the discharge of storm water from sedimentation ponds in active mining areas on an intermittent and flow variable basis via Outfalls 001 and 008, and the discharge of storm water from sedimentation ponds in reclamation areas on an intermittent and flow variable basis via Outfalls 101-103, 105, and 108-112. The facility is located along both sides of State Highway 30, approximately 0.5 miles west of the intersection of State Highway 30 and Farm-to-Market Road 244, near the community of Carlos, Grimes County, Texas.

CITY OF WHEELER has applied for a renewal of Permit No. 10382-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 120,000 gallons per day via evaporation and irrigation on 37 acres of pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the east side of U. S. Highway 83, approximately one mile north of Farm-to-Market Road 152 in Wheeler County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the permit issued to CHUSEI (USA) INC. which operates a polyethylene wax refining, custom SOCMI chemical manufacturing and tolling, and organo silicasol and sterol production facility, to include requirements which will restrict the use of certain chemicals at the facility. The existing permit authorizes the discharge of storm water and previously monitored effluents on an intermittent and flow variable basis via Outfalls 001 and 002; and storm water on an intermittent and flow variable basis via Outfall 003. The facility is located approximately one mile southwest of the intersection of State Highway 146 and Fairmont Parkway in the Bayport Industrial Park, and bordered on the east by the Southern Pacific Railroad in the City of La Porte, Harris County, Texas.

TRD-200501734
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 27, 2005

♦ ♦ ♦

Notice of Water Rights Application

Notices mailed April 20, 2005 through April 22, 2005.

APPLICATION NO. 5864; TXU Big Brown Mining Company LP (TXU or Applicant) owner, TXU Mining Company LP, operator, 1601 Bryan Street, Dallas, Texas 75201-3411, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. TXU seeks authorization to: (1) Maintain three reservoirs in the Big Brown Lignite Mining Area (LMA) on Pin Oak Creek, tributary of Cottonwood Creek, tributary of Tehuacana Creek, tributary of the Trinity River, Trinity River Basin, for domestic, livestock, agricultural (wildlife management) and game preserves purposes in Freestone County; (2) Divert and use not to exceed 120.5 acre-feet of water per year from two unnamed tributaries of Pin Oak Creek and Pin Oak Creek, within the Pin Oak Creek portion of the Big Brown LMA and Pond B-62 (DP 7 below) for dust suppression and other mining related activities, and (3) Divert over-flow from Reservoir No. 2, Pond B-87, via a constructed spillway directly to Reservoir No. 1, Pond B-89, during major storm events. Ownership of the mining rights in TXU's Big Brown LMA is held under multiple mining leases as evidenced by warranty deeds and leases submitted in the application filed with the Texas Railroad Commission and in the Deed Records of Freestone County. The water will be diverted at or upstream from six (6) identified points in the watershed within the boundary of the LMA, at a combined maximum rate not to exceed 6000 gpm (13.4 cfs). The diversion points are located in Freestone County. For a full description of the reservoirs and diversion points, contact the Office of the Chief Clerk at the address indicated below, or view the full notice at the public notice web site www.tceq.state.tx.us/comm_exec/cc/pub_notice.html. TXU Big Brown Mining Company LP (formerly Texas Utilities Mining Company) is the owner of Water Use Permit No. 5128 which authorizes the owner to construct and maintain a dam and reservoir, Pond B-62, on Pin Oak Creek and to impound therein 120.5 acre-feet of water at the lowest ungated outlet elevation of 353.0 feet above mean sea level for sediment control purposes within Big Brown LMA. Upon issuance of this application as requested, TXU will abandon Water Use Permit No. 5128, and Pond B-62 and diversion point No. 7 will be included in Water Use Permit No. 5864. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and required fees were received on October 7, 2004 and additional information was received on January 11 and February 14, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 4, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5851; The Brazos River Authority has applied for a permit, designated its "System Operation Permit", to authorize: 1) appropriation of state water for multiple use purposes; 2) appropriation of current and future return flows; 3) an exempt interbasin transfer of the water requested; 4) operational flexibility; 5) recognition that the System Operation Permit will prevail over inconsistent provisions in its existing water rights; and 6) the use of the bed and banks of the Brazos River, its tributaries, and BRA's reservoirs for the storage, conveyance and subsequent diversion of state water appropriated pursuant to this application and from other sources. The TCEQ will hold a public meeting to receive comments on the application filed by the Brazos River Authority. The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the Informal Discussion Period will not be considered by the Commissioners before reaching a decision on the application and no formal response will be made. During the Formal Comment Period, members of the public may state their comments into the official record. The Executive Director will summarize the formal comments and prepare a written response. The written response will be considered by the Commissioners in their decision-making process and upon request will be available to the public. The Public Meeting is to be held: Tuesday, May 17, 2005 at 7:00 p.m., Brazos River Authority Headquarters, 4600 Cobbs Drive, Waco, Texas 76714. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the meeting to the Office of the Chief Clerk, TCEQ, MC 105, P.O. Box 13087, Austin, Texas, 78711-3087. If you need more information, please call the TCEQ Office of Public Assistance, toll free at 1-800-687- 4040. For a copy of the complete notice which contains more detailed information on this application, contact the Office of the Chief Clerk at the address indicated below, or view the full notice at the public notice web site www.tceq.state.tx.us/comm_exec/cc/pub_notice.html. This application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies. The TCEQ will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on June 25, 2004, and additional information was received on October 8 and October 12, 2004. The application was declared administratively complete and accepted for filing on October 15, 2004. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200501733
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 27, 2005

♦ ♦ ♦

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 27, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 27, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Abeida Inc. dba Quik Serve; DOCKET NUMBER: 2005-0217-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 5371, Regulated Entity Number (RN) 101909323; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,280; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: American Rockwool, Inc. dba Thermafiber, Inc.; DOCKET NUMBER: 2005- 0335-AIR-E; IDENTIFIER: Air Permit Number 9397, RN100215243; LOCATION: Nolanville, Bell County, Texas; TYPE OF FACILITY: mineral wool manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 9397, and THSC, §382.085(b), by exceeding the maximum pounds per hour allowable emission rate for carbon monoxide; PENALTY: $2,240; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: BMC Holdings Inc.; DOCKET NUMBER: 2004-2054-AIR-E; IDENTIFIER: Air Account Number JE0343H, RN102559291; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to provide initial emissions event notification; and 30 TAC §116.115(b)(2)(F), Permit Number 901, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $3,680; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Baptist Hospitals of Southeast Texas dba Memorial Hermann Baptist Beaumont Hospital; DOCKET NUMBER: 2004-2111-PST-E; IDENTIFIER: PST Facility Identification Number 48639, RN102920220; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: emergency generator supplied by an underground storage tank; RULE VIOLATED: 30 TAC §334.8(c)(4)(B), by failing to submit a completed registration and self-certification form; PENALTY: $600; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Brownfield; DOCKET NUMBER: 2004-1636-PST-E; IDENTIFIER: PST Facility Identification Number 68300, RN102851748; LOCATION: Brownfield, Terry County, Texas; TYPE OF FACILITY: vehicle fueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Larry King, (512) 239-7037; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(6) COMPANY: Budget Rent A Car System, Inc.; DOCKET NUMBER: 2004-2006-PST-E; IDENTIFIER: PST Facility Identification Numbers 31048 and 73218, RN102887098 and RN102887049; LOCATION: Richardson and Dallas; Dallas County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide

acceptable financial assurance; PENALTY: $3,232; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: S R Burzynski, MD; DOCKET NUMBER: 2005-0423-PST-E; IDENTIFIER: PST Facility Identification Number 73909, RN101895977; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: private fuel dispenser; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $840; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Caro Water Supply Corporation; DOCKET NUMBER: 2005-0185-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1740007, RN101184141; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.47(h), by failing to issue boil water notices; and 30 TAC §290.46(g), by failing to take bacteriological samples; PENALTY: $1,020; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Cynthia Brown dba Cindy's; DOCKET NUMBER: 2005-0061-PST-E; IDENTIFIER: PST Registration Number 40726, RN102719192; LOCATION: Robert Lee, Coke County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to regularly inspect cathodic protection components in all the underground storage tanks (USTs); 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.48(c), by failing to conduct inventory control for all USTs; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(10) COMPANY: Glass Texaco Distributors, Inc. dba Essex Texaco; DOCKET NUMBER: 2005-0275-PST-E; IDENTIFIER: PST Registration Number 42586, RN102911161; LOCATION: Rusk, Cherokee County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $760; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239- 1675; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: HJG Trucking Company; DOCKET NUMBER: 2005-0128-WQ-E; IDENTIFIER: RN102377371; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: sand pit; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $5,700; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Ollie J. Hilliard dba Jamie's House Charter School Water System; DOCKET NUMBER: 2005-0302-PWS-E; IDENTIFIER: PWS Number 1013266, RN104074125; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(1), by failing to provide "as built" plans for review and approval; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement for the water well; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: $126; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Kenedy; DOCKET NUMBER: 2004-1936-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10746-001, RN102097839; LOCATION: Kenedy, Karnes County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10746-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total suspended solids, five- day biochemical oxygen demand, total residual chlorine, and dissolved oxygen; PENALTY: $7,568; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: M.A.D. Property Management, L.P. dba J&H Stop & Shop; DOCKET NUMBER: 2005-0119-PST-E; IDENTIFIER: PST Facility Identification Number 00971, RN102358660; LOCATION: Azle, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(15) COMPANY: Mark A. Mouton; DOCKET NUMBER: 2005-0022-OSI-E; IDENTIFIER: On-Site Sewage Facility (OSSF) Installer License Number OS0005735, RN103748133; LOCATION: Warren and Buna; Tyler and Jasper Counties, Texas; TYPE OF FACILITY: OSSF; RULE VIOLATED: 30 TAC §285.61(4) and THSC, §366.051(c), by failing to obtain proof of a permit and approved plan before beginning construction; PENALTY: $408; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100; 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898- 3838.

(16) COMPANY: Noltex, L.L.C.; DOCKET NUMBER: 2005-0122-AIR-E; IDENTIFIER: Air Account Number HG7698J, RN101049518; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(1), 115.352(2), 115.354(2)(B) and (C), and 116.115(c), 40 CFR §§60.482-2(a)(1) and (c)(1) and (2), 60.482- 7(a), (d)(1) and (2), and 60.482-8(c)(2), and New Source Review Permit Number 19074, and THSC, §382.085(b), by failing to monitor fugitive components in volatile organic compound (VOC) service, by failing to repair fugitive components in VOC service, and by failing to make first attempts at fugitive component leaks; and 30 TAC §115.782(b)(1) and THSC, §382.085(b), by failing to make a first attempt at leak repair to a fugitive component in highly reactive VOC service; PENALTY: $24,320; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: City of Pampa; DOCKET NUMBER: 2003-1312-AIR-E; IDENTIFIER: Air Account Number GH0055U, RN100211416; LOCATION: Pampa, Gray County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §122.130(b)(1), 40 CFR §60.752(c)(1), and THSC, §382.054, by failing to submit a federal operating permit abbreviated application; and 30 TAC §101.20(1) and 40 CFR §60.757(a)(1)(i) and (2), by failing to submit a complete design capacity report; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(18) COMPANY: Proton PRC, LTD. dba Oasis Car Wash; DOCKET NUMBER: 2004-2096- PST-E; IDENTIFIER: PST Facility Identification Number 70148, RN102378874; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: car wash with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $950; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: S.L.C. Water Supply Corporation; DOCKET NUMBER: 2004-1133-PWS-E; IDENTIFIER: PWS Number 1470031, RN101265908; LOCATION: Groesbeck, Limestone County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes; PENALTY: $323; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710- 7826, (254) 751-0335.

(20) COMPANY: S.N.V. Business Inc. dba Bellaire Food Mart; DOCKET NUMBER: 2004- 1961-PST-E; IDENTIFIER: PST Facility Identification Number 35333, RN101724409; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,460; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239- 2136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(21) COMPANY: Steinhagen Oil Company, Inc. dba Fastlane No. 3; DOCKET NUMBER: 2004-2064-PST-E; IDENTIFIER: PST Facility Identification Number 9307, RN101739035; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: retail gas station; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and (d)(6)(E) and the Code, §26.3475(a), by failing to have a release detection method capable of detecting a release and by failing to conduct a site assessment prior to the installation of a groundwater monitoring system; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: The Texas Youth Commission; DOCKET NUMBER: 2004-1367-PST-E; IDENTIFIER: PST Facility Identification Number 55834, RN101683241; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: juvenile corrections; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs in a manner which will detect a release; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: Ubuck, LLC dba Sage Foods; DOCKET NUMBER: 2004-1833-PST-E; IDENTIFIER: PST Facility Identification Number 28610, RN102821931; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: John Rumfolo dba Walter's Quik Stop; DOCKET NUMBER: 2005-0160- PST-E; IDENTIFIER: PST Facility Identification Number 73770, RN102716461; LOCATION: Tomball, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Ofelia Bosquez dba Wencho's Gas and Food Mart; DOCKET NUMBER: 2005-0132-AIR-E; IDENTIFIER: Air Account Number EE1228E, RN101652691; LOCATION: Tornillo, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by offering for sale gasoline with an oxygen content lower than 2.7% by weight; PENALTY: $800; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(26) COMPANY: West Texas Gas, Inc.; DOCKET NUMBER: 2004-1870-PST-E; IDENTIFIER: PST Facility Identification Number 27656, RN102277266; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; and the Code, §5.702 and §26.358(f), by failing to pay aboveground storage tank fees; PENALTY: $800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(27) COMPANY: Western Transportation, Inc.; DOCKET NUMBER: 2005-0483-PST-E; IDENTIFIER: RN104516927; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $800; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200501721
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 27, 2005

♦ ♦ ♦

Department of State Health Services

Notice of Intent to Revoke the Certification of Mammography Systems of Hereford Regional Medical Center

Notice is hereby given that the Radiation Control Program, Department of State Health Services (department), filed a complaint against the following registrant: Hereford Regional Medical Center, 801 East 3rd Street, Hereford, Texas 79045, Registration No. M00408.

The department intends to revoke the certification of mammography systems; order the registrant to cease and desist use of such mammography machine(s); order the registrant to divest itself of such equipment; and order the registrant to present evidence satisfactory to the department that it has complied with the orders and the provisions of the Health and Safety Code, Chapter 401.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501739

Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 27, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on East Texas Medical Center Management

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to East Texas Medical Center Management (registrant--R22120-006) of Tyler. A total penalty of $10,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501737
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 27, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Goolsby Testing Laboratories, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Goolsby Testing Laboratories, Inc. (licensee--L03115) of Humble. A total penalty of $14,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501740
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 27, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Harold D. Lewis, D.O., dba Family Practice Clinic

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Harold D. Lewis, D.O., dba Family Practice Clinic (registrant--R22434) of Austin. A total penalty of $8,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501738
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 27, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Northstar Surgical Center

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Northstar Surgical Center (registrant--R26257) of Lubbock. A total penalty of $5,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501741
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 27, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Patricia H. Janki, M.D.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Patricia H. Janki, M.D. (registrant--R25967) of Houston. A total penalty of $4,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501742
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 27, 2005

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (St. Augustine Estates) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at W. W. Samuell High School, 8928 Palisade Drive, Dallas, Texas 75217, at 6:00 p.m. on May 25, 2005 with respect to an issue of tax-exempt

multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $10,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to St. Augustine Estate Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 150-unit multifamily residential rental development to be located at approximately the 2300 block of North St. Augustine Drive, Dallas County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200501704
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 26, 2005

♦ ♦ ♦

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Prairie Ranch Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at West Elementary School, 2911 Kingswood Boulevard, Grand Prairie, Texas 75052, at 6:00 p.m. on May 23, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $13,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to ARDC GPwest, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 176-unit multifamily residential rental development to be located at 4940 South State Highway 360, Tarrant County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200501706
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 26, 2005

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of TIG PREMIER INSURANCE COMPANY to FAIRMONT PREMIER INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Martinez, California.

Application to change the name of SEGUROS TEPEYAC, S.A. to MAPFRE TEPEYAC, S.A., a Mexican Casualty company. The home office is in San Fernando Huixquilucan Estado de Mexico.

Application for admission to the State of Texas by OCEAN HARBOR CASUALTY INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Tallahassee, Florida.

Application for admission to the State of Texas by CATHOLIC KNIGHTS, a foreign Life, Accident and/or Health company. The home office is in Milwaukee, Wisconsin.

Application for incorporation to the State of Texas by MEDICUS INSURANCE COMPANY, a domestic Fire and/or Casualty company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501735
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 27, 2005

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 577 "Easy 10"

1.0 Name and Style of Game.

A. The name of Instant Game No. 577 is "EASY 10". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 577 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 577.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $50.00, $60.00, $200, or $1,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 577 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$200	TWO HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 577 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $200.

I. High-Tier Prize- A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (577), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 577-0000001-001.

L. Pack - A pack of "EASY 10" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "EASY 10" Instant Game No. 577 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "EASY 10" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals a 10 (ten) play symbol in the play area the player wins prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning play symbols will never occur with the same prize symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "EASY 10" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "EASY 10" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "EASY 10" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "EASY 10" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "EASY 10" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 577. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 577 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,693,440	11.90
$2	2,016,000	10.00
$3	161,280	125.00
$4	120,960	166.67
$5	80,640	250.00
$6	80,640	250.00
$10	80,640	250.00
$20	60,480	333.33
$30	18,480	1,090.91
$60	13,440	1,500.00
$100	2,520	8,000.00
$200	2,268	8,888.89
$1,000	428	47,102.80

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 577 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 577, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501686

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 25, 2005

♦ ♦ ♦

Instant Game Number 595 "Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 595 is "CASHWORD". The play style is "key symbol match with a prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 595 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 595.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and ?.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 595 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
■	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 595 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $100 or $500.

I. High-Tier Prize- A prize of $5,000 or $35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (595), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 595-0000001-001.

L. Pack - A pack of "CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASHWORD" Instant Game No. 595 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 139 (one hundred thirty-nine) possible play symbols. The player must scratch off all 18 (eighteen) boxed squares in the YOUR LETTERS play area to reveal 18 play symbol letters; then scratch the corresponding letters found in the CASHWORD puzzle grid play area. If a player scratches at least three (3) complete "words" in the CASHWORD puzzle grid play area, the player will win the corresponding prize indicated in the prize legend. For each of the 18 play symbol letters revealed in YOUR LETTERS play area, the player must reveal the identical key play symbol letter in the CASHWORD puzzle grid play area. Letters combined to form a complete "word" must appear in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the CASHWORD puzzle grid. Only letters within the CASHWORD puzzle grid that are matched with the YOUR LETTERS can be used to form a complete "word". The three (3) small letters outside the squares in the YOUR LETTERS area are for validation purposes and cannot be used to play CASHWORD. In the CASHWORD puzzle grid, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS to be considered a complete "word". Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols S, T, O, N. E, must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. Letters combined to form a complete "word" must appear in an unbroken vertical (top to bottom) or horizontal (left to right) string of letters in the CASHWORD. To form a complete word, an unbroken string of letters cannot be interrupted by a block space. Any other words contained within a complete word are not added or counted for purposes of prize legend. Every single letter in the vertical or horizontal (left to right)‘ unbroken string must: (a) be one of the 18 larger outlined play symbols letters revealed in the play area, YOUR LETTERS, and (b) be included to form a complete "word". The possible complete words for this ticket are contained in the CASHWORD play area. Each possible complete word must consist of three (3) or more letters and occupy an entire word space. Players must match all of the play symbol letters to the identical key play symbols in a possible complete word in order to complete the word. If the letters revealed form three (3) or more complete words each of which occupy a complete word space on the CASHWORD play area, the player will win the corresponding prize shown in the prize legend for forming that number of complete words. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred thirty-nine (139) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have 139 (one hundred thirty-nine) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 139 (one hundred thirty-nine) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 139 (one hundred thirty-nine) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Adjacent tickets in a pack will not have identical patterns.

C. Each ticket consists of a Your Letters area and one Crossword Puzzle Grid.

D.The Crossword Puzzle Grid will be formatted with at least 1000 configurations (i.e. puzzle layouts not including words).

E. All Crossword Puzzle Grid configurations will be formatted within a grid that contains 11 spaces (height) by 11 spaces (width).

F. Each word will appear only once per ticket on the Crossword Puzzle Grid.

G. Each letter will only appear once per ticket in the YOUR LETTERS play area.

H. Each Crossword Puzzle Grid will contain the following: a) 4 sets of 3 letter words b) 5 sets of 4 letter words c) 3 sets of 5 letter words d) 3 sets of 6 letter words e) 1 set of 7 letter words f) 2 sets of 8 letter words g) 1 set of 9 letter words. h) 19 words per puzzle per ticket.

I. There will be a minimum of three (3) vowels in the YOUR LETTERS play area.

J. The length of words found in the Crossword Puzzle Grid will range from 3-9 letters.

K. Only words from the approved word list will appear in the Crossword Puzzle Grid.

L. None of the prohibited words (see attached list) will appear horizontally (in either direction), vertically, (in either direction) or diagonally (in either direction) in the Cashword puzzle grid.

M.You will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the Crossword Puzzle Grid.

N. Each Crossword Puzzle Grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted Crossword puzzles (i.e. the same grid), all "approved words" will appear in every logical (i.e. 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e. will not place the word ZOO in a position that causes an intersecting word to require the second letter to be "Z", when in fact, there are no approved words with a "Z" in the second letter position).

O. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the Crossword Puzzle grid.

P. No ticket will match eleven (11) words or more.

Q. Each ticket may only win one (1) prize.

R. Three (3) to ten (10) completed words will be revealed as per the prize structure.

S. NON-WINNING TICKETS: Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the CASHWORD Puzzle Grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASHWORD" Instant Game prize of $5,000 or $35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASHWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 595. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 595 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	1,800,000	6.67
$5	1,512,000	7.94
$10	288,000	41.67
$20	120,000	100.00
$100	25,200	476.19
$500	4,400	2,727.27
$5,000	47	255,319.15
$35,000	16	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.20. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 595 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 595, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501687
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 25, 2005

♦ ♦ ♦

Instant Game Number 596 "Fabulous 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 596 is "FABULOUS 5'S". The play style in Game 1 is "key number match with doubler." The play style in Game 2 is "match up." The play style in Game 3 is "bonus game". The play style in Game 4 is "three in line with doubler". The play style in Game 5 is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 596 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 596.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $55.00, $100, $500, $1,000, $5,000, $55,000, 5 SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, $00, X SYMBOL, O SYMBOL and 5 SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 596 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$55.00	FFY FIV
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$55,000	55 THOU
5 SYMBOL	DOUBLE
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
$00	TRY AGAIN
X SYMBOL	
O SYMBOL	
5 SYMBOL	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 596 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $55.00, $100 or $500.

I. High-Tier Prize- A prize of $5,000 or $55,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (596), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 596-0000001-000.

L. Pack - A pack of "FABULOUS 5'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FABULOUS 5'S" Instant Game No. 596 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FABULOUS 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 42 (forty-two) Play Symbols. In Game 1, if a player matches three (3) identical amounts the player wins amount indicated. If a player matches two (2) identical amounts and reveals a "5" play symbol the player wins double the amount indicated automatically. In Game 2, if a player reveals two (2) "5" play symbols the player wins prize indicated. In Game 3, if a player reveals a prize between $15.00 inclusive and $55.00 inclusive the player wins that prize amount indicated. In Game 4, if a player reveals three (3) identical "X" play symbols or three (3) identical "O" play symbols either diagonally, vertically, or horizontally the player wins prize indicated in Prize Box. If a player reveals three "5" play symbols either diagonally, vertically, or horizontally the player wins double the prize indicated. In Game 5, if a player matches either of the LUCKY NUMBERS play symbols to any of YOUR NUMBERS play symbols the player wins prize indicated for that number. If a player reveals a "5" play symbol the player wins double the prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 42 (forty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 42 (forty-two) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 42 (forty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 42 (forty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The doubler feature will never appear more than once within a game and only on intended winning tickets as dictated by the prize structure in games 1, 4 and 5.

C. Game1: No four or more of a kind.

D. Game 1: No three pairs in this game.

E. Game1: No three of a kind and a doubler symbol.

F. Game 2: There will be no occurrence of two matching play symbols other than the 5 symbol.

G. Game 4: This game may only win once.

H. Game 4: There will be at least two 5 play symbols in this game.

I. Game 5: No three or more like non-winning prize symbols in this game.

J. Game 5: No duplicate non-winning YOUR NUMBERS play symbols.

K. Game 5: No duplicate LUCKY NUMBERS play symbols on a ticket.

L. Game 5: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "FABULOUS 5'S" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $55.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $55.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FABULOUS 5'S" Instant Game prize of $5,000 or $55,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FABULOUS 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FABULOUS 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FABULOUS 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 596. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 596 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	880,000	6.82
$10	400,000	15.00
$15	160,000	37.50
$20	100,000	60.00
$50	80,000	75.00
$55	20,000	300.00
$100	9,650	621.76
$500	1,300	4,615.38
$5,000	50	120,000.00
$55,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 596 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 596, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501688

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 25, 2005

♦ ♦ ♦

Manufactured Housing Division

Notice of Administrative Hearing

Thursday, May 26, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Ghengis Khan Investments, to hear alleged violations of Sections 1201.354, 1201.356, 1201.357, 1201.358, 1201.451, 1201.551(a)(3) and 1201.455(a) of the Act and Sections 80.131(b) and 80.132(3) of the Rules by selling a used manufactured home without the appropriate, timely transfer of a good and marketable title, failing to deliver a habitability warranty, and not complying with the initial report and warranty orders of the Director and providing copies of completed work orders in a timely manner. SOAH 332-05-5427. Department MHD2005000238-W and MHD2005000239-L.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200501703
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: April 26, 2005

♦ ♦ ♦

State Preservation Board

Consulting Services Contract Notification

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the State Preservation Board is giving notice that it intends to award a consulting agreement for a museum exhibit front-end audience evaluation to People, Places & Design Research, unless a better offer is received. The Agency has received underwriting for the planning of the exhibit through a grant from the National Endowment for the Humanities (NEH). The Consultant will work with agency staff to develop a research strategy, design data gathering tools, monitor acquisition of data, review and analyze data and create a summary report in order to understand initial audience expectations for the exhibit, entry level knowledge of the topic and motivations for coming to the exhibit. The Agency intends to award the contract to the consultant listed above who was identified in the NEH grant application that is providing the project funding.

Please call David Denney, Director of Public Programs, The Bob Bullock Texas State History Museum, (512) 936-2311 if you have questions or need further information. The deadline for inquiries is May 27, 2005.

TRD-200501705
Linda Gaby, CTPM
Director of Administration
State Preservation Board
Filed: April 26, 2005

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 18, 2005, Supra Telecommunications and Information Systems, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60177. Applicant intends to reflect a change in ownership/control.

The Application: Application of Supra Telecommunications and Information Systems, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31007.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 11, 2005. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31007.

TRD-200501651
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 21, 2005

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on April 14, 2005, pursuant to the Public Utility Regulatory Act, TEX. UTIL. CODE. ANN. §§14.101 and 37.154 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Application of AEP Texas Central Company and South Texas Electric Cooperative Reporting Sale of Certain Substation Facilities, Docket Number 31003.

The Application: AEP Texas Central Company (TCC) and South Texas Electric Cooperative (STEC) filed an application reporting sale of certain substation facilities. The facilities are located within the Loyola Substation, which is approximately 1 mile north of the unincorporated community of Riviera and 0.5 miles east of Highway 77 in Kleberg County. The subject facilities are 100% dedicated to serving customers that would be transferred to Nueces Electric Cooperative, Inc. (NEC) upon Commission approval of Docket 30633, *Joint Petition of Nueces Electric Cooperative, Inc. and AEP Texas Central Company to Transfer Service Area Rights and Associated Distribution Faclities*. In accordance with the operating agreement between NEC and STEC, these facilities are the type that STEC owns and operates to serve NEC. TCC, NEC, and STEC agree that the transfer would appropriately be made to STEC instead of NEC. This transfer is contingent upon the approval of Docket Number 30633.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477.

Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 31003.

TRD-200501653
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 21, 2005

♦ ♦ ♦

Notice of Filing Made for Approval of a Tariff Rate Change for Service Charges Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by La Ward Telephone Exchange, Inc. (La Ward) with the Public Utility Commission of Texas (commission) on April 8, 2005 to make a tariff rate change.

Docket Title and Number: Application of La Ward Telephone Exchange, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 30992.

The Application: La Ward has filed a statement of intent to implement revisions to its Local Exchange Access Line rates and to increase its Service Order, Returned Check and DID Number Block rates.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact La Ward Telephone Exchange, Inc. at Highway 172, La Ward, Texas 77970 or call (361) 872-2211 during regular business hours.

Customers have a right to petition the commission for a review of this application. If the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is June 30, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800-735-2988.

TRD-200501652
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 21, 2005

♦ ♦ ♦

University of North Texas

Invitation for Consultants to Provide Offers of Consulting Services Related to Assisting the University of North Texas Office of Research Services

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the University of North Texas.

Scope of Work:

The selected consulting firm will be responsible for assisting UNT in developing and maximizing its facilities and administrative rate proposal for submission to the Dallas Office of the Department of Health and Human Services, Division of Cost Allocation. The consulting services will include, but not necessarily be limited to, the following: development of a project plan and control mechanism; development of a facilities space survey instrument; ratio analysis of data obtained from the facilities space survey; provide support for the reconfiguration and reinstallation of the existing Comprehensive Rate Information System database in conjunction with and using PeopleSoft data; review of and advice related to the allocation basis of costs; review of and advice related to interest expense charges; review of and advice related to facilities and administrative depreciation methodologies; review of and advice related to direct charge equivalent methodology and calculation of the departmental administration rate component; review of and advice related to incorporation of cost sharing data; assistance with preparation of the facilities and administrative proposal; and advice and assistance related to the Division of Cost Allocation review, defense of the submitted proposal and space survey, and rate negotiations.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers UNT, and any other information the consultant desires UNT to consider in connection with the consultant's offer; (8) information to assist UNT in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist UNT in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT in assessing the overall cost to UNT for the requested services to be performed; and (12) information to assist UNT in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein relate to services previously provided to UNT by Maximus, Inc. in the original development and implementation of the Comprehensive Rate Information System database. Unless a better offer (as determined by UNT) is received in response to this Invitation, UNT intends to award the contract for the consulting services to Maximus, Inc.

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by UNT on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection

of the Successful Offer may be made by UNT on the basis of negotiation with any of the consultants. At UNT's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. UNT will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. UNT will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however, UNT reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, UNT may permit a consultant to revise its offer in order to obtain the consultant's best final offer. UNT is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by UNT. UNT reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT.

Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will be evaluated by University of North Texas and member institution personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation; and (2) the consultant's recognition that some subjective judgments must be made by UNT during this Invitation process.

Finding by President:

The President of the University of North Texas finds that the consulting services are necessary because the University of North Texas does not have the specialized experience or the staff resources available for the development and integration of its existing software systems with Peoplesoft data for the submission of its Research Services facilities and administrative rate proposal to the Department of Health and Human Services, Division of Cost Allocation. The University of North Texas believes that such expert consulting services will be cost effective by maximizing its research funding.

Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specification section of this Invitation and any other relevant information in a clear and concise written format to: Don Lynch, Purchasing Services Manager, University of North Texas, 2310 North Interstate 35-E, P.O. Box 310499, Denton, Texas 76201. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 1:00 p.m., CDT, Monday, June 6, 2005 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to: Don Lynch, Purchasing Services Manager, University of North Texas, 2310 North Interstate 35-E, P.O. Box 310499, Denton, Texas 76201. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200501736
Sandy Shelton
Contract Administration Manager
University of North Texas
Filed: April 27, 2005

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist,

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501700
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 26, 2005

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

☐ **Change of Address**
(Please fill out information below)

☐ **Paper Subscription**
☐ One Year $240 ☐ First Class Mail $300

☐ **Back Issue ($10 per copy)**
_____ Quantity

Volume _____, Issue #_____.
(Prepayment required for back issues)

NAME_____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

Payment Enclosed via ☐ Check ☐ Money Order
Mastercard/VISA Number _____
Expiration Date _____/_____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Visit our home on the internet at http://www.sos.state.tx.us.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additional entry offices

_____
_____